

ZB# 93-46

Constantine Leonardo

70-1-1.1

Prelim.

Oct. 25, 1993

Check signifiers

② Parking for

mixed uses,
may need more
variances.

Notice of Denial
to be amended.

③ ~~Dev. coverage~~ No

④ Parking

Need copy of ①

① Need it ^{have} here

② Title Report - ^{available} none

③ Photos

④ Fees - ① 150.00
② 482.00

2nd Prelim.

November 22, 1993.

Need Affidavit
of owner re:

NO. 753 1/3

ESSELTE

Oxford®

Department

① Dan requests:

Wants drawings
6 copies 1 week in
advance

② Also wants new

seeds

Notice faxed to Sentinel on 10/29/93.
Letters out

Public Hearing:
December 13, 1993

Variances

Approved

Lot #1.
① 92 ft. dot width
② 3.04 ft. max. bldg. hgt.
③ 5.04 ft. front yd.

70-1-1.1.

#93-46 Leonardo Constantine
Area - canopy/signs

TOWN OF NEW WINDSOR
555 Union Avenue
New Windsor, NY 12550

GENERAL RECEIPT

13761

Received of

Constantine M. Leonardo \$ 150.00

One Hundred Fifty 00 DOLLARS

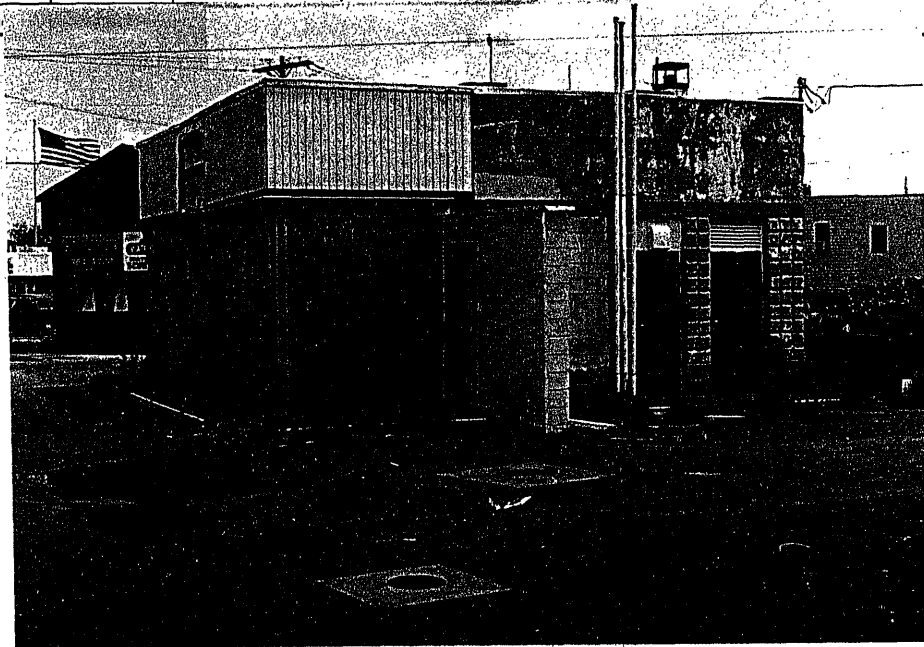
For 3 BA 93-46

DISTRIBUTION:

FUND	CODE	AMOUNT
<u>OK 0316</u>		<u>150.00</u>

By Pauline G. Townsend
Town Clerk

© WILLIAMSON LAW BOOK CO., VI

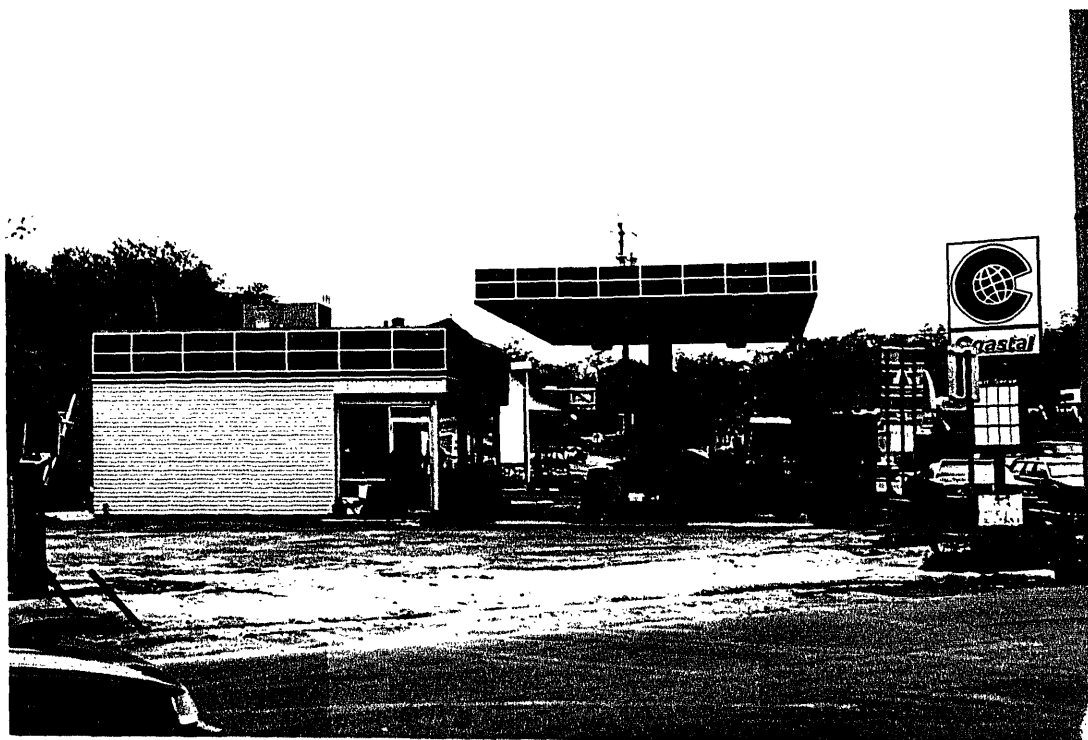


CO #51-Excise Ban Modules

CE-0316	150.00

© WILLIAMSON LAW BOOK CO. VI

by William H. Courtenay
Town Clerk



CD#51- Excess Ban Modules

APPLICATION FEE (DUE AT TIME OF FILING OF APPLICATION)

APPLICANT: Leonardo, Constantine

FILE # 93-46

RESIDENTIAL: \$50.00

COMMERCIAL: \$150.00

APPLICATION FOR VARIANCE FEE

\$ 150.00 paid
ck # 0526 - 12/3/93

* * * * *

ESCROW DEPOSIT FOR CONSULTANT FEES

\$ 482.00
~~292.00~~ pd.
ck # ~~872~~ -
0515
12/3/93.

DISBURSEMENTS -

STENOGRAPHER CHARGES:

PRELIMINARY MEETING - PER PAGE	\$	_____
2ND PRELIM. MEETING - PER PAGE	\$	_____
3RD PRELIM. MEETING - PER PAGE	\$	_____
PUBLIC HEARING - PER PAGE	\$	_____
PUBLIC HEARING (CONT'D) PER PAGE	\$	_____
TOTAL	\$	_____

ATTORNEY'S FEES:

PRELIM. MEETING- _____	HRS.	\$	_____
2ND PRELIM. _____	HRS.	\$	_____
3RD PRELIM. _____	HRS.	\$	_____
PUBLIC HEARING _____	HRS.	\$	_____
PUBLIC HEARING _____	HRS. (CONT'D)	\$	_____
FORMAL DECISION _____	HRS.	\$	_____
TOTAL HRS. _____	@ \$ _____	PER HR.	\$ _____
			TOTAL \$ _____

MISC. CHARGES:

Postage - 38 @ 29¢ \$ 11.02.
TOTAL \$ _____

LESS ESCROW DEPOSIT	\$	_____
(ADDL. CHARGES DUE)	\$	_____
REFUND TO APPLICANT DUE	\$	_____

(ZBA DISK#7-012192.FEE)

*Rec'd TH
Office
2/2/95 (PAB)
Town Clerk*

DANIEL S. LUCIA
ATTORNEY-AT-LAW

343 TEMPLE HILL ROAD
NEW WINDSOR, NEW YORK 12553

TELEPHONE
(914) 561-7700

BY HAND

January 19, 1995

Mrs. Patricia A. Barnhart, Secretary
Zoning Board of Appeals
Town of New Windsor
555 Union Avenue
New Windsor, New York 12553

Re: Zoning Board of Appeals and
Planning Board Files

Dear Pat:

In accordance with your request, I have checked to see if I still had any Town files in my possession. I found the following Zoning Board of Appeals ("ZBA") and Planning Board ("PB") files which I return herewith:

<u>Board</u>	<u>File No.</u>	<u>File Name</u>
ZBA	91-3 (also 91-33)	Andoom Development Corp., Inc.
ZBA	93-46	Leonardo, Constantine
ZBA	93-47	Leonardo, Constantine
ZBA	93-47a	Leonardo, Samuel
PB	330	Windsor Counseling Group v. The Planning Board of the Town of New Windsor, New York Article 78 Proceeding.

Unless I am instructed otherwise, I will not do any further work on any of the ZBA files. The Article 78 proceeding against the Planning Board was settled and discontinued long ago. That file is now closed.

If you have any questions, please do not hesitate to call me. Best wishes.

Very truly yours,



Daniel S. Lucia

DSL:rm
Enclosures
cc: Mr. James E. Nugent, Jr.
N177A950.119

-----x
In the Matter of the Application of

CONSTANTINE LEONARDO

FORMAL DECISION
GRANTING AREA
VARIANCES#93-46.
-----x

WHEREAS, CONSTANTINE LEONARDO, 18 Oak Street, Newburgh, New York, 12550, has made application for a 92 ft. lot width variance, a 50.4 ft. front yard variance, an 18.8 ft. maximum building height variance (canopy), 56 s.f. sign variance for freestanding sign, 4 ft. height variance for sign on canopy, 69.5 s.f. for the Coastal and Dive Shop wall signs, a variance for two signs (only one is permissible when three is requested), and a variance of 14.45 ft. sign setback from roadway, in order to subdivide lot #1 and #2 for proposed addition of retail sales in existing building (convenience mart) and gasoline canopy, on property located on Route 32 at Five Corners in Vails Gate in a C zone; and

WHEREAS, a public hearing was held on the 13th day of December, 1993 before the Zoning Board of Appeals at the Town Hall, New Windsor, N. Y.; and

WHEREAS, the applicant appeared by Eugene Ninnie, P.E. of Civil Technologies and Engineering Corp., Rt. 9D, Wappingers Falls, N. Y. 12590; and

WHEREAS, there were no spectators present for the hearing; and

WHEREAS, there was no opposition to the application before the Board; and

WHEREAS, the Zoning Board of Appeals of the Town of New Windsor makes the following findings in this matter:

1. The notice of public hearing was duly sent to residents and businesses as prescribed by law and published in The Sentinel, also as required by law.

2. The evidence presented by the applicant showed that:

(a) The property is located in a commercial area zoned C with many other gas stations and commercial entities in the immediate area commonly known as "Five Corners".

(b) Applicant has requested a lot line change before the Planning Board in order to separate the two parcels which at the present time are separated only by a boundary agreement between the two owners, i.e. Constantine and Samuel Leonardo. Separation of the two parcels has created the need for the requested area variances.

(c) The structures located on the parcel have been in

existence for upwards of 20 years and applicant is in the process of upgrading and renovating the gasoline station by adding retail sales (convenience mart) and a fire suppression canopy which requires a building height variance due to insufficient set back from the roadway.

(d) The requested building height variances are based upon building setback. Applicant lost much of his frontage due to DOT takings over the years and is now required to seek a building height variance in order to rectify this shortage.

(e) The requested sign variances are required so that Applicant may construct a double-faced 96 s.f. freestanding sign, a 4 ft. height variance, 69.5 s.f. wall area signs (43 s.f. for Coastal and 50 s.f. for Dive Shop), a variance for two additional signs (only one is permissible), and 14.45 ft. sign setback.

WHEREAS, the Zoning Board of Appeals of the Town of New Windsor makes the following conclusions of law in this matter:

1. None of these variances will produce an undesirable change in the character of the neighborhood or create a detriment to nearby properties.

2. There is no other feasible method which can produce the benefit sought except the granting of all of the variances requested by the applicant.

3. The requested variances are substantial in relation to the town regulations, but nevertheless are warranted since the effect of the variances would only be to make the project consistent with the character of the surrounding neighborhood and district.

4. None of the variances will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or zoning district.

5. The difficulties in this matter are partly self-created since the applicant is proposing the lot line change, thereby creating undersized parcels. Nevertheless, the Board feels that the awarding of the variances are justified in order to cure the problem which existed many years before zoning. The general appearance of the neighborhood will be greatly improved with these modifications.

6. It is the finding of this Board that the benefit to the applicant, if the requested variances are granted, outweighs the detriment to the health, safety and welfare of the neighborhood or community by such grant.

7. It is the further finding of this Board that all variances are the minimum variances necessary and adequate to allow the applicant relief from the requirements of the bulk regulations and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

8. The interests of justice will be served by allowing the granting of the requested area variances.

NOW, THEREFORE, BE IT

RESOLVED, that the Zoning Board of Appeals of the Town of New Windsor GRANT the variances requested in paragraph "1" on page one of this decision, SUBJECT TO APPLICANT REMOVING THE CONTAMINATED SOIL LOCATED ON THE SOUTHEAST SIDE OF THE PARCEL WITHIN 120 DAYS OF THE DATE OF THE DECISION, as sought by the applicant in accordance with plans filed with the Building Inspector and presented at the public hearing.

BE IT FURTHER,

RESOLVED, that the Secretary of the Zoning Board of Appeals of the Town of New Windsor transmit a copy of this decision to the Town Clerk, Town Planning Board and applicant.

Dated: March 27, 1995.


Chairman

(ZBA DOCDISK#12-032295.CL)

December 13, 1993

LEONARDO, CONSTANTINE

MR. LUCIA: They are so intertwined, it's easier to let the applicant come in and present his whole thing and at the end, unless there's some reason the board wants to break apart the separate variances or make motions that might be for less than what he is seeking, probably move it as a single motion to adopt them all unless anyone has any difficulties or you want to seek a more minimal variance than what he is applying for.

MR. NUGENT: It's up to the board if you want to do that, that is fine. If not, we can take it as one lump and address all the items on each one.

MR. TORLEY: I would suggest when and if we come to voting on the appropriate variances, then you may want to break them back down into these three sections.

MR. NUGENT: Take them in order. I'll read it into the minutes the way it is written here. Request for 92 ft. lot width, 50.4 ft. front yard and 18.8 ft. building height for canopy and various sign variances listed on site plan for Coastal Gas Station located at NYS Routes 94/32 in a C zone.

Eugene Ninnie, P.E. appeared before the board for this request.

MR. LUCIA: Why don't we get on the record exactly what those sign variances are just so we're clear. Follow me, this one looks like we have freestanding sign of 48 square feet, 40 square feet are permitted and that generates a variance request of 8 square feet. The height on that is proposed as 19 feet, 15 feet is, it generates 4 foot sign height variance. Wall signs it appears Coastal is 43 square feet and the Dive Shop is 50 square feet for a total of 93 square feet of wall signs permitted is 5 percent of the wall area which computes out to 20.5 square feet that generates a need for 69.5 square feet variance for wall sign area. Total signs, three are proposed, these are all freestanding I assume, three freestanding signs.

MR. BABCOCK: No, that is wall signs.

MR. LUCIA: Three wall signs proposed, one is permitted, we need a variance request for two wall signs. Setback from lot line sign setback from lot line, 6 1/2 inches proposed requirement is 15 feet generates a request for 14.45 foot setback from the lot line, that should be 6.05, 6.55 which is proposed, I guess last line on your--

MR. BABCOCK: I see there's a mistake on there. It might be 6.5 and the addition is wrong. Do you remember where it was again?

MR. NINNIE: Yes.

MR. BABCOCK: I don't.

MR. LUCIA: 6.55 setback.

MR. BABCOCK: What is it?

MR. LUCIA: 6.55, I would assume.

MR. NINNIE: So this has to change, this or this.

MR. BABCOCK: What it's got to say, 6.55.

MRS. BARNHART: Yes.

MR. LUCIA: Should be 6.55 inches provided instead of 6.5. Decimal point is in the wrong place.

MR. NINNIE: This is in feet and this is in inches.

MR. LUCIA: It looks like the Notice of Denial is correct, the sign setback from the lot line proposed is 6.5 inches, 15 feet is required that generates a variance request of 14.45 feet.

MR. TORLEY: Freestanding sign if I am looking at your chart, parcel 70-1, it is showing 4 by 5 which is pricing so that is, this is 40 square feet here and 56 square feet there.

MR. TORLEY: It is not 48 square, if the feet provided

it's 96 square feet, he's asking for a variance of not 8 square feet but 16 square feet, I'm sorry 56 square feet.

MR. LUCIA: We probably are going to have to amend those numbers if that has been consistent throughout. Your plans are only counting one side.

MR. NUGENT: There's only one freestanding sign, isn't there?

MR. NINNIE: That is right, just one.

MR. BABCOCK: You agree that each side of the sign is 48 square feet?

MR. NINNIE: Yes.

MR. BABCOCK: So we have to double that requirement.

MR. NINNIE: To 96 and then subtract.

MR. LUCIA: 56 square foot variance request for the freestanding sign area.

MRS. BARNHART: Mike, would you change my Notice of Denial?

MR. BABCOCK: Yes.

MR. BABCOCK: That is also an existing sign because they are putting the sign on.

MR. NINNIE: DOT took six feet so that made that closer because the back curb is the edge of the DOT right-of-way.

MR. NUGENT: Let's stop right here, right now and get some kind of law and order here because we'll be in a disaster in no time flat. I'll read 7 and 8 and then address them. How want to address them is up to you.

MR. NUGENT: Request for 25,179 s.f. lot area, 50 ft. lot width, 3.04 ft. building height on Subdivision of Lot #1 which includes gas station and retail sales on

property listed above in a C zone.

MR. TANNER: Number 7 doesn't address the residential aspect of this property. There's an apartment in there also we're talking about retail and Dive Shop and gas station they are not addressing the apartment at all.

MR. NUGENT: I was under the assumption that the apartment was pre-existing.

MR. SAMUEL LEONARDO: We have an affidavit proving that Mr. Leonardo lived there for 30 years, we have an affidavit taken.

MR. TANNER: I haven't seen that.

MR. LUCIA: We did ask that the one parking place be shown on the map.

MR. NINNIE: Which is it?

MR. TANNER: Should that be listed there also on that?

MRS. BARNHART: No, because they are not asking for a variance for it.

MR. NUGENT: It's a pre-existing use, right?

MR. BABCOCK: Yes, actually, the one family apartment Ted is a permitted use there, he won't need a variance to have that there, he would need a variance for lot area, wasn't pre-existing.

MR. TANNER: I just don't want him to get in a situation where later on he runs into a problem.

MR. BABCOCK: Lot area of 20 acres is required in a C zone, that would be the variance that they would request but the caretaker's apartment is a permitted use in that building.

MR. TANNER: I just don't want him to be back here.

MR. LUCIA: In that same connection, Mr. Leonardo, Anthony Marshall's affidavit says that he knows you

occupied it from 1957 through April of 1993, what happened after April of 1993?

MR. SAMUEL LEONARDO: Young lady that works for me, he moved out and she moved in the same day.

MR. LUCIA: My concern is if you abandon for more than a year, you're going to lose it so it is presently still occupied.

MR. SAMUEL LEONARDO: Right, for my personal preference, the lot is, the area variances are reflecting the lot line changes that the changes that were done as far as the County is concerned quite some time ago really just getting back to us and personally I have no problem with drawing the lot line where it is. But I do have some substantial questions in regard to the gas station. If you want to yield to you, how you want to handle it.

MR. TANNER: No problem with doing it that way, that is probably a good way.

MR. LUCIA: We probably should have--

MR. TORLEY: Get the lot line change out.

MR. BABCOCK: It's a subdivision.

MR. TORLEY: Sorry, subdivision which is reflecting reality.

MR. LUCIA: Have the applicant lay out, I know you have done this but the history of how the lots came to have this configuration.

MR. NINNIE: I've written you a letter for all of you to follow but I'm going to read it out loud for the public hearing. Dear Members of the Board: It was proposed back in August, 1993, that the present use of gasoline filling at Lot 1.1 be changed to gasoline filling/retail. The use change required a site plan approval from the planning board. In its review of the proposed site plan, the planning board and consultants had determined that a sub-divide of the property was

needed. The sub-divide was needed to legally divide the two lots, since only a boundary agreement separated the two parcels yet two tax numbers existed, one for Lot 1.1 and 1.2. The boundary agreement was drawn up as part of probate of the estate of the late Catherine Leonardo, to separate the site into two lots for her two surviving sons. One lot for Constantine and the other for Samuel. These are Lots 1.1 and 1.2 respectively. Known variances were then recognized from the proposed subdivision and site changes on Lot 1.1. Therefore, an appearance before zoning board was warranted. It is through the subdivision process that most of the variances occur. The variances created by the subdivision consist of area, set-back and parking space variances on both lots. The above mentioned site, Lots 1.1 and 1.2, predates Town of New Windsor zoning laws by 2 years. The pre-existing conditions are substantiated through Town Assessor records and deed dated in 1933, enclosed. Upon the adoption of the zoning laws in 1960, both lots automatically became undersized. These variances associated with the subdivision cannot be mitigated or rectified due to this condition. The adoption of the zoning law after the establishment of lot 1.2, the lot that has no proposed site improvements. Again, the adoption of the zoning law after the establishment of lot 1.2 had rendered the site undersized. Zoning law regulations pertaining to parking are directly related to retail space and site area, in which to accommodate the spaces, therefore a variance for parking is needed and therefore requested. The site plan application will create variances by virtue of the site improvements that are proposed under that application. The site plan has created variances pertaining to lot width, setback, height and signage. Variances associated with lot width is connected to the lot predating zoning law. This variance cannot be mitigated or rectified, since the site is pre-existing zoning regulation adoption and the adoption of the zoning law after the establishment of lot 1.1 has rendered the site undersized and hence lot width also becomes non-conforming. Variances associated with setback, height and signage pertain to the proposed use of the lot. Setback variances created by the canopy cannot be rectified since the DOT takings over the last 20 years has limited setback to the 9/6

feet shown. Even without the canopy, the building itself cannot meet this setback condition, due to the building and lot pre-dating zoning law adoption. The height variance cannot be met due to similar circumstances that the setback variance cannot be met. Building height requirements are based upon building setback. Since building setback cannot be met due to the pre-dated condition, building height cannot be met. Even without the canopy, the building itself cannot meet the height regulations, due to the building and lot pre-dating zoning law adoption. Variances associated with signage are needed to properly market the produce in competition with the other three petroleum establishments. The three other petroleum marketing establishments, all within 200 feet of each other have signage similar if not larger than the proposed signage. Their facade sizes are smaller or the same as the building in question. Since signage is based upon percent area of building facade, the other three establishments must be at variance with town zoning as well, including setback. Enclosed photographs substantiate this variance of sign setback with their property lines and sign square footage greater than what is being proposed at Lot 1.1. Therefore the inclusion of signage similar to other establishments within 200 feet of one another and in a neighborhood that is similar in character will not be a detriment to the public health, safety and character of the neighborhood, that the other three similar facilities now possess. The area of the 5 corners is built up with three other petroleum marketing establishments, all within 200 feet of each other. these too have canopies the same height and larger footprint than the proposed canopy. Additionally, photographs enclosed indicate a greater variance with their property lines and canopies. Therefore, the inclusion of another canopy with similar characteristics and sitting in an area that is similar in use will not be a detriment to the public health, safety and character of the neighborhood, that the other three similar facilities now provide. Canopies are now becoming the favored structure with petroleum companies, since the canopy serves a two fold purpose. One is life safety. The canopy is an excellent structure to hang Halon fire suppression systems

attractively. The canopy also serves to protect the customer from adverse weather conditions that can affect safety of mobility when dispensing petroleum products. Therefore the canopy will be beneficial to the safety of the neighborhood, by making it safer for all who use the facility and to bring the present filling station up to safety similar to the other three facilities. Overall, the applicant is not asking for variances that do not exist in the neighborhood that do not presently exist with the other establishments now. Similarly, the applicant is proposing improvements to a site that before did not conform to neighborhood characteristics. The site has been in disarray for years. The owner, Mr. Leonardo, is attempting to improve and appreciate Lot 1.1 through a lease agreement with Gasland Petroleum Company. Under the lease agreement, Gasland will renovate the gasoline station and provide site improvements. The landowner will refurbish the dive shop to improve the building and provide site improvements, through proceeds generated by the lease agreement. Without Gasland Petroleum as a new tenant, the present owner cannot afford to improve the site. The inclusion of a new tenant, Gasland Petroleum Company, has only improved the site and blend the site with the present character of the neighborhood. Gasland is the key to improving the above mentioned property. Without the Gasland agreement, the property will remain as it is. Not granting the variances requested for will terminate the lease agreement between Gasland and Mr. Leonardo and leave the site uncompleted and non-conforming to neighborhood character. The applicant is only proposing a use and variances that the neighborhood presently accommodates with three other similar establishments. We therefore ask the board to grant the necessary variances to complete this part of the planning process and improve a site which needs improvement.

MR. LUCIA: It sounds like you're saying the lots in the present configuration pre-date zoning, that is not really true, the unsubdivided lot pre-dates zoning. One thing just for the board's etification, and if you go through this and look at what's pre-existing non-conforming, nothing has to do with the subdivision

is pre-existing, there are certain setbacks that may be pre-existing but as far as the subdivision of lots 1 and 2, that is an initial application to this board at this point.

MR. NINNIE: We have some photographs here too that we have, I don't know if Steve has circulated them.

MR. LUCIA: Mr. Leonardo, Mr. Babcock corrected me before there's a 12 year time period during which you'd have to abandon that apartment, before you'd lose it as a pre-existing use. I think I said one year. I want to correct that.

MR. SAMUEL LEONARDO: That young lady has been with me 16 years, I think she's going to remain with me another 16 years.

MR. TORLEY: Right now we're talking about the subdivision.

MR. NUGENT: What would you like to do? You were concerned about doing 7 and 8 first.

MR. TORLEY: Personally, I have no problems accepting the reality of a lot line.

MR. BABCOCK: So, you keep saying lot line, I don't mean to correct you but it is a subdivision so we should refer to item number 7 on the agenda and make a separate vote on 7, I think there should be a separate on each is that what you're asking?

MR. TANNER: Let's get the subdivision out of the way.

MR. NUGENT: That would be 7 and 8.

MR. BABCOCK: One at a time.

MR. NUGENT: We'll go 7 first then 8 and go back to 6.

MR. LUCIA: I want to get more evidence on the record. I know you covered a large part of this in your presentation but just let me have you respond to some of these items. Do you feel an undesirable change will

be produced in the character of the neighborhood or detriment to nearby properties by granting all these area variances?

MR. NINNIE: No.

MR. LUCIA: Could you describe the character of the neighborhood surrounding the subject site?

MR. NINNIE: Character of the neighborhood is presently occupied by commercial retail establishments specifically petroleum, marketing and like a convenience type of stores, snack shop, all within 200 feet of this particular site plan.

MR. LUCIA: And do you find that those competing establishments within 200 feet have similar setbacks, similar signage and similar area variance problems that you are presenting to this board?

MR. NINNIE: Yes.

MR. LUCIA: Some of them you think are even worse than yours?

MR. NINNIE: They are close, I wouldn't say worse but I would say they are very, very close because some of the for example the Hess station I've noticed when I was there I did a walk-around all the sites and took a photograph I believe one of them is a black and white, the canopy is right tight up against the fence and then there's an adjacent building obviously Hess does not own that adjacent building has to be neighboring property.

MR. LUCIA: Is the benefit which you seek here achievable by some other method feasible for you to pursue other than an area variance?

MR. NINNIE: No.

MR. LUCIA: Are the requested area variances substantial in terms of numbers?

MR. NINNIE: I don't feel they are, no.

MR. LUCIA: Some of these, especially with regard to--

MR. NINNIE: Not under the present circumstances that these lots have existed for so many years like this, even without the subdivide, the lot itself was non-conforming the day that the zoning law was adopted.

MR. LUCIA: You have drawn this to minimize as much as possible the requested area variances?

MR. NINNIE: Yes.

MR. LUCIA: Will the proposed variance have an adverse effect on physical or environmental conditions in the neighborhood or district?

MR. NINNIE: No.

MR. LUCIA: You're improving the environmental conditions of the neighborhood or seeking to?

MR. NINNIE: Yes.

MR. LUCIA: And was this difficulty self-created?

MR. NINNIE: No.

MR. LUCIA: I guess the subdivision being unilateral act by the Leonardo's was self-created but you are now here doing what you can to make it legal?

MR. NINNIE: We want to rectify and correct the situation.

MR. LUCIA: At the last meeting it was mentioned that the board members were going to visit the site individually since we're now meeting together, I don't know if anyone observed anything with respect to visits, if they want to share with other board members.

MR. TORLEY: Reflecting the area variances, no.

MR. NUGENT: No.

MR. LUCIA: Okay, you had a question Herb?

MR. LANGANKE: No, I was just going to proceed.

MR. LUCIA: Motion is in order unless the board has any additional questions?

MR. NUGENT: I thought you weren't finished yet.

MR. LANGANKE: I make a motion that we grant the applicant the variance requested in item 7 as stated in the Zoning Board of Appeals agenda dated December 13, 1993.

MR. TANNER: Second it.

ROLL CALL

MR. TANNER	AYE
MR. HOGAN	AYE
MR. TORLEY	AYE
MR. LANGANKE	AYE
MR. NUGENT	AYE

MR. NUGENT: I think we should address number 8.

MR. LUCIA: Without being repetitive, if I were to ask you each of those specific questions under Section 267B would your answers be substantially the same for this lot?

MR. NINNIE: Absolutely.

MR. TORLEY: And once again having walked there I have no objection to these area variances.

MR. NUGENT: I'll accept a motion on number 8 then.

MR. LANGANKE: I make a motion that we grant the applicant the variance requested in item 8 as stated in the Zoning Board of Appeals agenda dated December 13, 1993.

MR. TORLEY: Second it.

ROLL CALL

MR. TANNER AYE
MR. HOGAN AYE
MR. TORLEY AYE
MR. LANGANKE AYE
MR. NUGENT AYE

MR. NUGENT: Now we're back to number 6.

MR. TANNER: I have a question about signage here, we have been talking about all these Coastal signs, the Dive Shop goes in, there's no reflection of signs, I would assume they are not going to do business without a sign?

MR. BABCOCK: I can address that. I talked to the applicant, there will be no freestanding sign for the Dive Shop. There will only be a facade sign that is how we wrote it up.

MR. NUGENT: What's on the building now?

MR. BABCOCK: Yes, well, there's a temporary promotional sign that he was using.

MR. TANNER: Should that be reflected on here?

MR. BABCOCK: It is on the map.

MR. BABCOCK: There's a formula you have to compute it.

MR. LUCIA: 5 percent of all area, wall area, not all.

MR. BABCOCK: Which he called 50 square feet.

MR. LUCIA: One of the sign variances on the Dive Shop is 50 square foot proposed wall sign combined with the 43 square foot for Coastal.

MR. TANNER: Just so they are not back in here for another sign variance.

MR. LUCIA: Once again, if I were to ask you each of those--

MR. TORLEY: Before we get to the signs, I have one

overwhelming problem that I saw when I walked through the area as I have gone by I went over this past weekend, there's a huge pile of dirt in the back and two, 55 gallon drums with no clear legible label that I saw.

MR. SAMUEL LEONARDO: The two, 55 gallon drums belongs to the DEC which we have no jurisdiction, the dirt we're going to take the dirt away.

MRS. BARNHART: They are monitoring wells.

MR. TORLEY: That dirt has been there since August, is that dirt considered contaminated soil?

MR. SAMUEL LEONARDO: Yes, it is.

MR. TORLEY: You have had it sitting there uncovered since August?

MR. SAMUEL LEONARDO: We're waiting for this gentleman to open up so he can pay rent and we'll move the dirt.

MR. NINNIE: Most times the way the situation works not even with this station, I deal with a lot of them, it's more economical for the owner to let it sit there. Once they haul it off-site now they are liable even if you have something in writing from the DEC, the federal government can come back to you and say you're under lawsuit you have to remove it from a site 50 miles away because we have your map here.

MR. TORLEY: We know that I have a pile of dirt which you admit could be contaminated, it's uncovered and you're letting it leach out into the ground water. Personally I will not want to go forward with any of these things until the dirt is out of there and properly disposed of.

MR. STEVE KALKA: One, it's obvious to the benefit of the land owner to remove it. Two, there's nothing in the DEC regulations that require it to be moved off the site. That dirt can sit there forever literally. It's not considered hazardous waste material because of the level of contamination. One of the problems we have in

the industry is the analytical tests become more and more sensitive, the description of what's contaminated becomes larger and larger. Ten years ago parts per million were tested now we test parts per billion so consequently, what's legal to drink in Pennsylvania is contaminated in New York. So yes, the dirt is contaminated. You're concern is addressed, the DEC is aware of it. There's no wells in this particular area and the leaching effect from the dirt is basically minimal. If you take a pile of dirt even after a heavy rain storm, it doesn't penetrate very much into it. If you'd like, I would agree to it and I don't think we'd have a problem we'll cover it with plastic and keep it covered until we do get it off-site.

MR. TANNER: I don't see how you're going to do the site plan improvements without moving the dirt.

MR. KALKA: It's already been done.

MR. TANNER: This landscaping?

MR. NINNIE: Yes but in order for him to get the dirt of site which is very expensive, he has to get the proceeds from the lease agreement so he can pay for having the dirt removed.

MR. TANNER: Aesthetically, I have a real problem with the dirt to be honest with you and if you grant approval and then he says well, I got my rents, I don't need to move the dirt.

MR. SAMUEL LEONARDO: We'll put it in writing that after we collect the rent, the first rent 90 days the dirt will be out of there in 90 days. We'll put it in writing.

MR. TANNER: That is fine with me.

MR. SAMUEL LEONARDO: Right now.

MR. KALKA: As part of the approval.

MR. NUGENT: Put it right in the minutes.

MR. SAMUEL LEONARDO: Within 90 days we'll have it out of there.

MR. KALKA: Ira Conklin and another outfit by the name of Clean Earth, they are in Newburgh now so we don't want to ship it to Jersey or Buffalo or Cincinnati. What's happening right now--

MR. SAMUEL LEONARDO: The DEC just took 50 or 60 yards away. They were there yesterday and the guy told me it costs \$5,000 for the 60 yards.

MR. TANNER: It's not a reflection on Mr. Leonardo but people do just leave it and say--

MR. SAMUEL LEONARDO: We'll put it in writing. We can't have it there. And the DEC guy asked me if I can turn it over he said if you can turn it over that would help the contamination.

MR. NINNIE: Requires to turn it on over, turn it over to aerate it because it's a hydrocarbon.

MR. SAMUEL LEONARDO: We don't want to do it, we want to move it out.

MR. LANGANKE: I don't have any reason to disbelieve what Mr. Leonardo is saying. He wants the dirt out of there, he's willing to put it in writing I think it's fine.

MR. LUCIA: If the board would feel more comfortable you can make the motion subject to it being removed by a certain date so you are not always tied to his collection of rents or tenant going belly up or something that is completely beyond our control.

MR. TORLEY: No reflection, sir, we put that into the minutes so it has to be gone by February 1st, pick an arbitrary date, comes February 1st it's still there, what recourse do we have?

MR. LUCIA: He no longer has a variance. He can't build out the site plan.

MR. TORLEY: Well if he has gone beyond the point there are a lot of things that do not have variances that are churning along quite happily.

MR. LUCIA: Building inspector can cite him then.

MR. NINNIE: That is a Planning Board matter, they are definitely going to pick up on that and we're going to be held to the same type of conditions that you are requesting for here. So in order for them to grant us a viable site plan, they are going to have to somehow remove the dirt within a stipulated basis of time even if it is in writing contingent on this being removed.

MR. SAMUEL LEONARDO: Even if gasoline doesn't become the operator we have no choice, we have to get it out of there.

MR. NINNIE: Looking at parking spaces and part of the landscaping that is part of the site plan.

MR. TANNER: Why don't we take Mr. Leonardo up on his offer and take him up from there.

MR. TORLEY: My second problem is in the freestanding sign. Now, it is true that there are other signs around there that clearly are out of variance, but they are not before us now we have no control over them unless and until they do show up.

MR. NINNIE: We're just bringing out a point as comparison as part of the process of showing hardship and neighborhood character.

MR. TORLEY: Mobil lot came to the board before they put up the signs and in fact they reduced the initial requested sign areas and made substantial changes to meet the concerns of the board. We come up, we find gee, there's the sign now you're saying give us the sign regulations.

MR. SAMUEL LEONARDO: You have to remember, the base is in and the sign posts were already there.

MR. TORLEY: That doesn't matter, that sign is very

large, it's very close to the road and I'd like you to explain to me why you cannot get the same advertising coverage by putting your coverage on the canopy.

MR. MITCH NESHUWIT: If you bring the sign a little bit in, it will be a safety thing. My name is Mitch, I'm the tenant for that location.

MR. TORLEY: Get rid of the freestanding sign and put your signage on the canopy.

MR. KALKA: One thing the public has become accustomed to it, if you look at the signs in the neighborhood use the major marketing which is Mobil that the signs have become a stack system. In other words, you have vertical stack with a trademark, another trademark and price and what happens is you you have to put on the canopy you have to go horizontal. Try to think about it you don't even see a price sign on a canopy marquee type of sign but the thing is your eye tends to go where it's used to looking. Marketing and gasoline is extremely price sensitive. So if you say well, you're here in front of us so we're going to to the mark and paraphrase with you, it's not a fair situation we're asking for a variance so that we can compete on a level playing field with the people that are within 200 feet foot area. If this was the only site in a residential area, I wouldn't even be trying to make this argument. I think the reasons for granting a variance are very obvious. I want to be treated the same as our competition. We're not asking for more or less.

MR. SAMUEL LEONARDO: I'm glad you brought up the sign thing. If you will allow me to say a few words that touches a very tender spot in my heart. It hurts me because I had a sign up there before the ordinance was in effect, and it was three, 4 by 8 plywood boards nailed together so that would be 12 by 8, right, and the wind blew it down and I wasn't allowed to put it up and the building inspector at that time told me you only can put up a 3 by 5 sign so we couldn't fit Orange County Importing Company on a 3 by 5 sign so we had to put up Cheese Store. See so we're known as three different things. I bought the company was Orange County Importing Company, Leonardo Food Products so

we're known as Leonardo and I had to put the sign back up so what do we sell in the retail outlet, we sell mostly cheese. When I complained about it I said look I like to obey the law but how come Johnny-come-lately on the spot McDonald's we're here 70 years and we have been paying taxes for 70 years, McDonald's comes Johnny-come-lately and they ask for a variance and they get it right away. Then to add insult to injury, then comes Friendly's next door our neighbor and we look to be friendly so we're always friendly but anyway, what happened, they asked for a variance and they get it, no problem. So we're begging you that we only want you to treat us like you treated our friendly neighbors, be friendly to us.

MR. HOGAN: While you own that cheese store sign just a little aside I think I'd be happy to vote for a variance for a larger sign if the condition of the sign was much better. How long--

MR. LEONARDO: That's been there about 20 years. We have the trucks come out at nighttime from Club 32 and they have to get rid of all of that meanness in there and they throw rocks at it. That is better than breaking into the place. You know how many times I have been called down there at nighttime because one of the those drunks come out and there's a bottle through my window, you know and the alarm goes off and they call me. I bet you I have been called out ten times in 20 years. I'd like to catch one just once, I'd have him pay for the ten times.

MR. NUGENT: Let's get back to this.

MR. LEONARDO: So remember about McDonald's and remember about Friendly's, we don't ask for anymore, Mobil, Hess, you know what there excuse was.

MR. LANGANKE: I have no problem with the freestanding sign after hearing the discussion.

MR. BABCOCK: How can you do site improvements under a dirt pile, they'll bond it. It's one of the requirements. It's going to be called a cost estimate once they are ready for the C.O. I'm going to walk on

the site and look at the cost estimate what they haven't completed they are going to have to bond.

MR. NINNIE: That will probably be brought up at the Planning Board and we're anticipating it.

MR. KALKA: What we need to be able to proceed to that step which is through here and then we'll go on to that one.

MR. TORLEY: Did you ever ask for a variance for that cheese store sign?

MR. LEONARDO: Well, in order to put that one up, I had to get a permit or a variance, I don't know which in order to put up the 3 by 5.

MR. BABCOCK: Twenty years ago he probably wasn't, Jimmy, that has been changed several times.

MR. LEONARDO: Had to come before somebody, I forget, must have been the Planning Board or the Zoning Board, I don't know which and I had to get the variance to put up the sign 3 by 5. They only allowed then.

MR. BABCOCK: 1958 it was updated so I'm not sure what it changed to.

MR. LEONARDO: I think it's 6 by something now, isn't it?

MR. BABCOCK: It's 40 square feet total.

MR. TANNER: Can we get back to the Coastal signs here and try and complete this? The building signs, which ones are going on the canopy and which are going on the building?

MR. NINNIE: Okay, this one, these are going on the canopy at this location, number one, designates here on this side and this side, and C is going on this side here and here on the canopy edge and the building and the labeled number 3 that is going right here.

MR. LUCIA: Mr. Ninnie was taking the blocks labeled

building signs on sheet S 1 and relating the numbers on those 3 signs to the numbers shown on the block labeled building sign placement.

MR. TORLEY: You're putting the C on both faces on Coastal on the one face in addition to the C?

MR. NINNIE: That is correct.

MR. TORLEY: And the C markings on the front of the building?

MR. NINNIE: Yes.

MR. TANNER: That is the only one I would have a problem with. I think they are kind of being redundant with it. It's saying exactly what you already got there putting it up again. I don't know why it necessities 18 square feet. I don't feel it's necessary. I'm talking about number 2, the small C.

MR. NUGENT: That is the one on this sign right here?

MR. TANNER: It's up there already, it's also on the building evidently.

MR. NINNIE: It's on the building but not on the canopy.

MR. TANNER: I have less of a problem with it on the building than I do on the canopy.

MR. LANGANKE: On the ends there's only Coastal, this is on the ends, right?

MR. TANNER: All right, I don't have a problem with it that way at all.

MR. NUGENT: Want to explain to me what you just found out?

MR. TANNER: What he just said I don't have a problem with it.

MR. LUCIA: I think Mr. Hogan had a question on parking

and we now have an amendment.

MR. HOGAN: I still have a problem with parking. I don't have a problem with signs at all. With regard to this amendment to the lease and the amendment to the drawing, that course to this document here, just in way of summary I show that the ingress egress and the area for deliveries effects 5 of the 15 provided spots. You want me to point them out or just keep going?

MR. NINNIE: Yes, please.

MR. HOGAN: I've penciled in to the best of my ability where these number 6, number 5 is cut in half, number 6 is cut almost entirely.

MR. NINNIE: Now this piece you're getting from?

MR. HOGAN: From the original lease, this is prior I'm going back and number 9 is entirely within this area, 10 is partially within this area and 10 and 1 are also effected by the ingress egress triangle here.

MR. NINNIE: Well, this supersedes that which makes this null and void.

MR. HOGAN: That is fine. However, in terms of legality I want to take this a step further, the lease that was provided to us was between M & A Realty, I believe and Constantine Leonardo.

MR. SAMUEL LEONARDO: That is my brother.

MR. HOGAN: The problem I have this is really a question for Dan and if necessary I want to take it a step further but is this document that we're now looking at, is this going to bind all tenant, tenant and landlord to this agreement for a period of time that we're talking about, we have a ten year lease here.

MR. LUCIA: Yes it's difficult to say. You're correct the amendment says between the realty company and Constantine Leonardo which seems to be a stranger. It's signed by Leonardo, Constantine Leonardo, who is

the landlord on the basic lease. It's signed by someone indicated as Mitch Neshuwit, manager of M & A Realty Corporation. It's ambiguous to be honest.

MR. HOGAN: Because at some point in the future, once we have approved this, there's nothing stopping anyone of these three or all three together to assigning these spots strictly to other uses within this property here. I'd like this --

MR. SAMUEL LEONARDO: Doesn't it say it was agreed that both parties have permission of have ingress and access in order to park?

MR. HOGAN: I understand.

MR. LUCIA: Question is who signed it and on behalf of whom? In other words, this name the realty company is different than the name in the lease, this guy signing here doesn't indicate who he is signing on behalf of and in the lease it says he was signing on behalf of a realty corporation.

MR. SAMUEL LEONARDO: That is my nephew, that is the Dive Shop. Now Mitch is here, he's present and he can sign as M & A Realty. Can you put underneath your name M & A Realty?

MR. NESHUWIT: Yes.

MR. HOGAN: You're getting way ahead of us here. Just from my understanding, Mitch, you are in what position with M & A Realty?

MR. NESHUWIT: I'm the chairman for M & A Realty.

MR. HOGAN: I'm asking our attorney to have approve whatever document here and I'd like to make whatever we do today conditional upon document that tightens this up to the point where all of this parking is now and will forever more for at least next ten years jointly useable by both tenants on that property.

MR. LANGANKE: Can't you put that on the map and on the map put a note saying that therein.

MR. HOGAN: It's on the map.

MR. LANGANKE: In the minutes your approval per the map you referred to in the minutes.

MR. HOGAN: I don't want to drive into Coastal to run in and get a can of oil and see a sign Dive Shop parking only.

MR. NINNIE: Dan would they have to amend the deed?

MR. LUCIA: I don't think it's a matter of amending the deed, as getting the amendment to the lease to conform as to parties to the lease itself and to bring in the Dive Shop operator as by indicating exactly in what capacity he's signing it cause it looks just on the face of it he looks like he's a stranger to the whole transaction just to read the amendment.

MR. SAMUEL LEONARDO: He's my nephew and we don't know how longest going to stay. He put a lot of money and if it doesn't work out, I don't think it's going to be much longer.

MR. LUCIA: Mr. Hogan's concern is we want to tie this parking to whomever operates the Dive Shop and that is what we need to get nailed down.

MR. NINNIE: There's some legal terms that have to be added to that.

MR. SAMUEL LEONARDO: Or to any successor.

MR. LUCIA: It can be done, it's just a matter of how we're going to present it at this board. The other thing the board may once again want to take a look at on parking they are showing 15 spaces provided and you'll note as we discussed before 4 of those spaces are at the gas pumps which is not something we have ever seen in my tenure on the board and any other gas station application so depending on how you want to view that, it may increase his variance request for the number of parking spaces.

MR. BABCOCK: Dan, he only needs to provide 9 according to my calculation and if I take the four out, he will still be one over.

MR. HOGAN: My concern comes in if I take those 4 spots out and I take the fifth out could be effected by at any point in time by ingress deliveries et cetera then we're down to 6 spots for the entire site.

MR. NINNIE: If we go this route here but this has to be changed.

MR. KALKA: We'll tie that back into the lease.

MR. HOGAN: I'd like to make it conditional on whatever we do.

MR. KALKA: That is acceptable, it's reasonable.

MR. TANNER: Do we have any precedent for using gas pumps as parking spaces?

MR. LUCIA: Not that I have seen.

MR. KALKA: We discussed this at the last meeting and one of the problems in the Town of New Windsor and other jurisdictions where we go in front of converting service stations into convenient stores is that convenient store has been around for a long time, used to be called general store with a couple gas pumps out in front. In the zoning laws, as they have been rewritten, it is not addressed. If you look, you'll not find the word convenient store. It's like a hole, what's a convenient store and it doesn't fit the normal retailing. It's like delivery areas some of the zoning regulations require 15 by 65 foot long spot for a trailer truck to unload at a retail establishment that would be a year's supply at a convenience store. it doesn't fit and that is why I said to you when we addressed it the first time it's almost an educational process not a smoking mirrors type of thing. People do use the gas pumps for parking. They don't at a full service gas station because the attendant is going to show them out but at a convenient store, where you don't control them I get annoyed, I pull into the

convenient store and the guy, a driver in front of me being non-sexist, isn't getting gas but they park at the closest place where the gas pump is and decide to do the shopping. So in effect, I don't think we're pushing it. I think they truly are used for both.

MR. LUCIA: You can make the argument I think the board's concern is since we have had a number of convenient store gas stations before us and we haven't previously counted spaces at the pumps, I'm not sure they want to set a precedent for saying I've got 4 spaces under the canopy.

MR. KALKA: We don't need it, we can, I have waive that requirement.

MR. BABCOCK: They don't need the parking spaces for the gas station. It's not required. The parking spaces are there for the retail store. So if you just for a second thought about it and took the gas pumps out, you would have 4 retail parking spaces there so basically, like you said, you don't want to set a precedence where you are counting them but you could count them because they are there for retail not there for the gas pump.

MR. NUGENT: He has enough with or without so it's irrelevant really. Is there any other questions?

MR. LUCIA: On the cheese factory for parking we do have the 2 parking space variance requests?

MR. BABCOCK: That was on number 8.

MR. LANGANKE: That is already done.

MR. TANNER: Even if we eliminate the 4 spaces we have enough parking for the Dive Shop apartment and retail space?

MR. BABCOCK: Yes.

MR. LANGANKE: I have no further questions.

MR. TANNER: No questions.

MR. TORLEY: No.

MR. NUGENT: At this point, I'll open it up to anyone in the audience that would like to comment. Hearing none, I'll open it back to the board.

MR. LUCIA: Mr. Ninnie, if I were to ask you once again all the specific requirements of Section 267B of the Town Law would your answers be substantially the same as you gave them on the earlier operation?

MR. NINNIE: Absolutely yes.

MR. HOGAN: Before we go any further, in terms of back to this amendment to a lease, how just in the matter of mechanics how would you like that to be handled?

MR. LUCIA: I think if you want to condition your motion on them providing us with an amendment to the lease that is signed by the same parties to the original basic lease and is also signed by the lessee of the Dive Shop agreeing to the disposition of the parking spaces, I think that would be a, would meet our requirements as long as Mr. Leonardo says it will apply to assessors and assigns to those leases in case the tenant should change over the years.

MR. HOGAN: Do we need a copy of the lease between Constantine and--

MR. LUCIA: Yes, to establish his interest in the Dive Shop property, if there's a lease. If not, we can cover it by recitation of this agreement that this is your only agreement.

MR. SAMUEL LEONARDO: He's leaving anyway.

MR. KALKA: There's no problem.

MR. LUCIA: If you are in possession of the property, as the owner then you can represent that whoever you lease it to would be bound by the same terms.

MR. SAMUEL LEONARDO: Constantine will have to do it,

we'll do it, no problem.

MR. NUGENT: Also Mr. Hogan are you going to make the motion?

MR. HOGAN: I'll make the motion.

MR. NUGENT: Included in that has to be the stipulation on the dirt that it will be within 90 days or 120 days you want to give them a little leeway to have it removed?

MR. HOGAN: We're talking whatever date we a sign on the pile of dirt, whether it's 90 days which is what Mr. Leonardo is agreeing to, if it is 90 days from the day we grant the variance.

MR. NUGENT: 90 days from the formal decision.

MR. NINNIE: It will be a Planning Board decision I'm sure.

MR. LUCIA: It's kind of a belt and suspenders type thing. You may get a separate condition by the Planning Board hopefully the signatures will coincide. You can do it either way, it can be a date from tonight or from the formal decision that is up to you.

MR. NESHUWIT: Go for 120 days.

MR. NUGENT: From the formal decision.

MR. HOGAN: Mr. Leonardo, I don't mean to be presumptuous at all, you're speaking here for your brother, Constantine and can we get Constantine on the record that he is in agreement with everything?

MR. LUCIA: There was the lease that you originally signed with M & A Realty for the Coastal Gas Station. The board is concerned about how the parking is distributed between the gas station and the dive shop so they asked for an amendment to the lease, a change in the lease to tell us how that is going to be handled. The problem is that the amendment came in signed by you, that is fine, signed by Mitch and he

doesn't indicate that he is M & A Realty. So we need to change that. We also need to have John Antonori, we need some lease with him to show that he is also agreeing to the same thing or if he is leaving just as the owner agreeing that this is the deal on the parking and if you lease the property to somebody else, you don't know who it is but somebody in the future, he is going to be bound by it too.

MR. CONSTANTINE LEONARDO: No problem.

MR. LUCIA: We want you under agreement that you'll do all these things.

MR. CONSTANTINE LEONARDO: No problem.

MR. NUGENT: Then we'll accept that motion now.

MR. HOGAN: I move that we grant the variances requested, 92 foot lot width, 50.4 foot front yard and 18.8 foot building height for the canopy and sign variances as we previously discussed earlier in the record.

MR. LUCIA: Spell them out again, just clarity, 56 square foot variance for freestanding sign, a 4 foot height variance for freestanding sign, a 69.5 square foot area variance for total wall signs, a variance of 2 wall signs where only one is permitted and 3 are requested and a 14.45 foot setback from the lot line variance for the freestanding sign.

MR. HOGAN: All applying to the Coastal sign owned by Constantine Leonardo subject to the pile of dirt located on the southeast side of the parcel being removed within 120 days of the date of the formal variance being granted. And additionally conditioned on--

MR. LUCIA: Formal decision.

MR. HOGAN: And conditionally conditioned on all of the, we're saying 11 parking spots all of the 11 parking spots being shown as available for use of the 2 tenants identified and their successors.

MR. LUCIA: And an agreement to the satisfaction of the board that those terms will be incorporated in present leases and all future leases in the property.

MR. HOGAN: Evidenced by the amendment that is satisfied to you, our attorney.

MR. LANGANKE: I'll second it.

ROLL CALL

MR. TANNER	AYE
MR. HOGAN	AYE
MR. TORLEY	AYE
MR. LANGANKE	AYE
MR. NUGENT	AYE

November 22, 1993

2

LEONARDO, CONSTANTINE #46

MR. NUGENT: Request for 92 ft. lot width, 50.4 ft. front yard and 18.8 ft. building height for canopy and various sign variances listed on site plan for Coastal Gas Station located at NYS Routes 94 and 32 in a C zone.

Eugene Ninnie, P.E. appeared before the board for this proposal along with Steve Kalka.

MR. NINNIE: The site plan improvements that are being proposed they have a set of variances that go with them. There is a subdivision of the parcel into two parcels, that has a set of variances with it, each one is separate and that is what you see there.

MR. LUCIA: First application is the Coastal application site plan.

MR. NUGENT: Each of you should have a copy of the revised referral in your packet tonight.

MR. LUCIA: This particular application is sheets 1 and 2 so in addition to the variances that the chairman read, I think on this one, you're also seeking a number of sign area variances, is that correct?

MR. NINNIE: That is correct.

MR. LUCIA: Maybe we should read those for the record also.

MR. NUGENT: Okay, there's also in this referral is the signage variances, there's 4 different signs. Mike, could you clarify that for me?

MR. NINNIE: Freestanding sign obviously is the sign that is going to sit on the existing pedestal.

MR. NUGENT: Strictly square footage, correct?

MR. NINNIE: That is correct.

MR. LUCIA: So that is a--

MR. NUGENT: That is on an existing pillar.

MR. NINNIE: There's also a setback variance that goes along with that sign also.

MR. LUCIA: Just for the record, I think that the proposed freestanding sign is 48 square feet, is that correct?

MR. NINNIE: That is correct.

MR. LUCIA: Allowed is 40 square feet so with respect to that, you're looking for 8 square foot sign area variance freestanding sign?

MR. NINNIE: Yes.

MR. LUCIA: I think that sign is 19 feet high, is that correct?

MR. NINNIE: Yes.

MR. LUCIA: Their permitted height is 15 feet so we're looking for 4 foot sign type variance. Setback on that one is 6.5 inches, is that correct?

MR. NINNIE: Yes and we need 14.45 for variance.

MR. LUCIA: Required is 15 foot setback so it's a 14.45 foot setback for that freestanding sign. Okay, we then have some wall signs or actually for both for Coastal and the Dive Shop.

MR. NINNIE: Let's start with the Coastal Station, there's only one sign that is going to be facing the front, that is 30 square feet. It allows the total building front is 475, variances that we're given is 5 percent of that 475 which equates to 23.75 square feet. But we have gone above that to 30, we're requesting 6.25.

MR. LUCIA: Now on the Notice of Denial Mike shows 5 percent of all area at 20.5 square feet.

November 22, 1993

4

MS. BARNHART: He has a total of 93 square feet.

MR. NINNIE: Yes, the facade sign total is 43, yes?

MR. NUGENT: 43 and 50, that is 93 and variance is 69.5.

MR. LUCIA: Right. Do we need to revise those?

MR. NINNIE: I was just taking out this one particular sign. Facade sign total of 43 and dive shop of 50 which is 93.

MR. TORLEY: You're referring to your map is one dated 10/29?

MR. NINNIE: Yes.

MR. LUCIA: Then in addition, there's a variance required for total number of signs I guess there are 3 signs proposed, they are all freestanding I assume.

MR. BABCOCK: No, they are wall signs.

MR. LUCIA: And one wall sign permitted so it's a variance request for two wall signs.

MR. NINNIE: Yes.

MR. LUCIA: I think that covers all the sign variances, is that correct, Mike?

MR. BABCOCK: Yes.

MR. NINNIE: There's also setbacks for the building or I mean for the canopy, we have 9.6 feet from the edge of the canopy to the property line and we have to have a required of 60, we're asking for a variance of 50.46.

MR. NUGENT: That is your front yard requirement?

MR. NINNIE: Yes. There's also a minimum lot width required of 200 feet, we only have a 108, we're requesting a variance of 92. The building height allows us 3.2 that is based on four inches per foot at

the nearest lot line. We've provided 22 feet and that leaves 18.8 feet.

MR. LUCIA: That height is canopy height, is that correct?

MR. NINNIE: Yes.

MR. LUCIA: Mike, on your page one of the Notice of Denial, I notice on the lot width and the required front yard lines there's an asterisk and the number one were those referring to something else? I didn't see that.

MS. BARNHART: I think that is pre-existing.

MR. LUCIA: On page 3, yes, I'm sorry thank you. I guess the asterisk is on page 3 regarding pre-existing condition. Just refresh my memory, why is the lot width pre-existing if there's a subdivision currently?

MR. BABCOCK: We're asking for the variance, we're saying that the lot width is pre-existing. It was measured, we measured it different the day we had the meeting we said it's the Town measures it either by the setback or by the building front so what we did is we took the worse case scenario and the lot width cause of the shape of the lot and we came up with 108 feet.

MR. NINNIE: There's a plan revised one use that one right there on your left. We're asking for a variance of 92 feet.

MR. LUCIA: It really is not pre-existing for purposes of this application.

MR. BABCOCK: No, I'm not sure where did you see the note for that?

MR. LUCIA: Page 3, I think.

MR. BABCOCK: Maybe you can clear that up for the record.

MR. LUCIA: Based on the discussion we just had we

November 22, 1993

6

should delete from the page one of the Notice of Denial the asterisk and the numeral one in paren after the variance request on the minimum lot width line and on the required front yard line.

MR. KALKA: Would the sign base be pre-existing on the freestanding sign since there's been a sign for 40 or 50 years? I realize there's an area variance being requested but signs we're reusing that base that was there or has been there.

MR. LUCIA: Actually there was a state taking that even further reduced your frontage, I think it's probably easier if the board considers it as a mitigating circumstance. We understand the signs in the same place. It's always been but in terms of dimensions it looks like a very substantial variance on setback. I think the board does understand the history, the numbers are the numbers but we realize it's not changing position.

MR. NUGENT: Also regardless of whether it's an existing standard or not, it's always been in violation what we're doing now is cleaning it up.

MR. LUCIA: That is true.

MR. BABCOCK: When we first started Mr. Chairman we had a number of variances that we said or number of items that we said was pre-existing and instead of calling them pre-existing, we're trying to straighten out the whole thing so we're now asking for a lot width so we can straighten that out.

MR. NUGENT: Actually, they are subdividing this piece of property.

MR. NINNIE: That is correct and there's a set of variances along with that.

MR. BABCOCK: That is why there's 3 denials.

MR. NUGENT: Right.

MR. LUCIA: It appears I guess that you are not looking

9/93

PENGAD CO., BAYONNE, NJ 07002 • LASER BOND-A

for any parking space variances on this and Mr. Hogan raised a very good question.

MR. HOGAN: I was taking a look at the lease premise that Coastal has and regarding the entire piece, the upper lot what lot number is that?

MR. BABCOCK: Lot one.

MR. HOGAN: There's quite a bit of area that is eliminated by either ingress or egress requirements or only for use to pull over for deliveries et cetera from the entire parcel of lot number one.

MR. NINNIE: Eliminated. Could you point that out to me?

MR. LUCIA: The other thing in relation to it if you look at schedule C, it doesn't conform necessarily with the area respectively for Coastal and for the dive Shop and one of Mr. Hogan's concerns is that the parking for the gas station be located upon the premises that Coastal is actually leasing from Mr. Leonardo and conversely the parking for the Dive shop be on property which is retained for the Dive shop.

MR. NINNIE: Could there be an addendum to the lease provided to show that they are going to have shared parking? Since they are so close to each other.

MR. TANNER: If it is ever sold.

MR. LUCIA: The problem is--

MR. NINNIE: The only way you can sell it is one parcel that is the reason for the subdivision.

MR. LUCIA: Presumably the lease is a signable and ten year lease, the danger is suppose you get someone who wants to come in and wants to insist on the strict letter of the terms of the lease, theoretically, it could deprive the Planning Board is going to.

MR. TANNER: We're on parking here a little bit, but I have been going by here the last couple of weeks, there

November 22, 1993

8

appears to me to be an apartment upstairs in the Dive Shop. There's definitely lights on in the evening. There's definitely someone moving around in the evening. There's no reflection of that on here.

MR. SAMUEL LEONARDO: There's always been an apartment for the last 30 years.

MR. TANNER: You need parking?

MR. SAMUEL LEONARDO: There's a garage that belongs to the apartment.

MR. TANNER: We have no indication if I hadn't driven by we'd have no indication there was an apartment there.

MR. HOGAN: There is an area that you are permitted to use for deliveries. So all of this portion if you will, both of these geometrical shapes, triangle, is eliminated from the lot area. These spots over here 5, 4, 3, 2, 1, 9 and part of 10 are also by lease eliminated from the lot area.

MR. HOGAN: But not from the Dive Shop.

MR. HOGAN: Right.

MR. NINNIE: I think I have some place on here.

MR. HOGAN: Probably 6 and 5 would be eliminated from the Dive Shop portion also and definitely 9.

MR. TORLEY: I'm a little confused. I'm glad Dan brought this up. You're showing 9 spaces required and you're providing 15?

MR. NINNIE: Which one are you referring to?

MR. TORLEY: I'm looking at for the Dive Shop and the gas station, is that what that is for? I'm looking on sheet is one site plan.

MR. LUCIA: If you look to the right of the drawing, the little box the lower right box to the right of the

property says parking spaces 1 to 9 are Dive Shop Caesar, Ten to fourteen are gasoline filling/retail. He's showing only the 9 required but my concern is that the spaces go with the premises, they are intended to serve and the description in the lease makes it appear that a substantial part of those parking places would have to go with the Dive Shop.

MR. TANNER: Plus you're going to need two more if there's a residence on this property.

MR. LUCIA: One other factor if you look at the canopy, four of those spaces actually are gasoline filling spaces. I think if you look at the definition.

MR. NINNIE: When somebody goes and fills up in a gasoline station they park their car and go in and pay and so that constitutes as parking space.

MR. LUCIA: Logically that may be true if you consult the definition in the ordinance that may not be a result.

MR. KALKA: My business is building and rebuilding gas stations, converting them to convenient stores and one of the problems with zoning and parking convenient store business hasn't been written in it and again the point has been valid in a lot of jurisdictions, when you pull into a place and the car is empty at the convenient store, it's because that person got gas or went inside but didn't get gas but just used it because it's the closest to the door. So this is indeed a parking space. We're not talking about a particular person, the average person stays in a convenient store just a matter of minutes so I don't think that is stretching the point. I think enough, 4 parking spots under the canopy in the fact you have 4 parking spots.

MR. LUCIA: I think it's ultimately the board's determination based on the definition of the ordinance what it is they want to call a parking space.

MR. TORLEY: I don't recall if the Mobil Station counted parking at the pump.

MR. LUCIA: I don't recall any service station application since I have been on the board showing parking. Logically, I understand what you're saying but I'm just giving you the history of what this board has seen on other similar applications in the past.

MR. TORLEY: I don't suppose you can count--

MR. LUCIA: It's in the definition, Section 38-47, the definitions for parking space, a stall or birth which is arranged and intended for the parking of one motor vehicle in a garage or parking area. Parking area is then defined as a lot or part thereof used for the storage of parking of motor vehicles with or without the payment of rent or charges and/or other consideration.

MR. NINNIE: Four more spaces we can accomodate in extra parking.

MR. TANNER: I have a real problem with the retail and residential and everything on that size lot. I think I have a real problem with that. I think you know we're trying to cram everything into this little tiny lot. Next we'll find out there's something else in there.

MR. LUCIA: If we subtract the 4 under the canopy we're down to 11 provided and it's 9 plus whatever we need for the apartment.

MR. KALKA: 9 plus one is what you need.

MR. TORLEY: Again, how many parking spaces would be required just for the Dive Shop?

MR. NINNIE: We put that down here.

MR. HOGAN: One per 150 square foot.

MR. LUCIA: The one garage you're speaking about is actually in the Dive Shop.

MR. NINNIE: Yes, it's in the back.

MR. TANNER: Is it computed as part of the area of the

November 22, 1993

11

Dive Shop or is it computed as a garage?

MR. NINNIE: It's computed as gross area which is on the, it wasn't counted as part of retail, no.

MR. SAMUEL LEONARDO: It is a garage.

MR. TORLEY: Now, this is considered a caretaker's apartment or something?

MR. TANNER: Can't be, they don't have enough acreage.

MR. BABCOCK: We haven't got into that until tonight, when Ted brought it up.

MR. TANNER: There's not enough acreage.

MR. LUCIA: It is 20 acres because the living quarters is under use B 10.

MR. TANNER: Doesn't quite make that.

MR. LUCIA: There's a substantial area variance.

MR. SAMUEL LEONARDO: My brother lived there up till a year ago and when he moved out, a young lady who's been working for me for 16 years moved in.

MR. TORLEY: Question is if you can establish that it has been used as an apartment since before zoning, you can do that.

MR. SAMUEL LEONARDO: Sure we can.

MR. LUCIA: It's been occupied for 30 years since 1963.

MR. SAMUEL LEONARDO: At least as an apartment.

MR. TANNER: Is it on the tax rolls as an apartment?

MR. SAMUEL LEONARDO: This I cannot tell you how many years have you lived there? He lived there 15, 20 years himself, he only moved out about a year ago.

MR. TANNER: See that is about the only way you can

9/93

establish it if it is shown on tax rolls. Where he just can't take someone's word for it, regretablely.

MR. SAMUEL LEONARDO: It's been an apartment for as long as I can remember. Why can't you take my word for it? Why would I lie? Why I would I?

MR. KALKA: It's a matter of telling the truth that the board can use.

MR. TANNER: I'm not saying you're lying.

MR. TORLEY: Unfortunately, we're required to have the documentation.

MR. LUCIA: That is not the only proof we accept.

MR. TORLEY: Utility bills.

MR. TANNER: Something I can hang my hat on.

MR. SAMUEL LEONARDO: Does anybody remember when Buddy's Burgers was there, my brother Constantine who is the owner, ran Buddy's Burgers and he lived upstairs.

MR. LUCIA: Mr. Tanner said that we would accept evidence from the assessor. I think we also would accept other evidence that you have to indicate that it has in fact been occupied since 1963 at least as an apartment. So when you come back for the public hearing, it would behoove you to come back with whatever evidence, whether it's testimony or affidavits from neighbors or utility bills or something the board can look at and say yes, we're confident there has been a caretaker or someone living in the apartment since prior to the adoption of the zoning in the Town of New Windsor.

MR. HOGAN: What's the requirement for a caretaker apartment?

MR. LUCIA: In terms of parking spaces, so if in fact you have 24 taking out the 4 under the canopy because that is iffy at this point, probably it's okay. The

November 22, 1993

13

only difficulty is aligning those 11 spaces under the lease together with the Dive Shop and gas station. So if that requires an amendment to the lease, I assume that probably can be done.

MR. NINNIE: That would be the easiest way to amend the lease to accomodate the parking spaces because we don't have much room to jockey things around.

MR. LUCIA: I guess we would have to show the one garage parking space on the plan.

MR. NINNIE: I'm going to update that, show the apartment and the garage.

MR. NUGENT: I believe Ted and you can check it. Tomorrow when you go to work, the entrance to that garage is on what would be the east side of the building.

MR. NINNIE: No, there's a garage door definitely right here.

MR. SAMUEL LEONARDO: It's on the west side.

MR. NINNIE: Overhead door is 9 feet wide, small door.

MR. TORLEY: Now we have gone over the sign variances under 17.

MR. NUGENT: We got them all out, we got all sign variances, we got front yard variance and we got the lot width variance.

MR. TORLEY: So we're really down.

MR. NUGENT: We're only doing one, don't confuse the issue, this is as far as we are right here. Is everybody with me, understand?

MR. LANGANKE: Yes.

MR. HOGAN: Is the Dive Shop functional at this point? I saw a sign on front.

November 22, 1993

14

MR. NINNIE: It's empty.

MR. TORLEY: Vacant hopefully to be leased retail outlet.

MR. NINNIE: Yes.

MR. TORLEY: Whatever wants to go in there will not be back for different variances.

MR. NINNIE: Hopefully this is why we're here so we don't have to.

MR. NUGENT: Danny, on the building height, there's an existing building they didn't change that, right?

MR. BABCOCK: Nope.

MR. NUGENT: All we're talking about is the canopy strictly.

MR. BABCOCK: Yes.

MR. NINNIE: And that is 22 feet.

MR. BABCOCK: That is the only change to the property, the buildings are existing, just the canopy is the change.

MR. TORLEY: Well, the previous garage section was sort of gutted out and turned into the retail area, correct?

MR. BABCOCK: Yes, there's a small section of retail which is 604 square feet of retail added for mini-mart.

MR. TORLEY: Rebuilt on the same foundation?

MR. NINNIE: Building footprint hasn't changed.

MR. NUGENT: Any other question on number 1?

MS. BARNHART: Are we adding any parking?

MR. NUGENT: No.

November 22, 1993

15

MR. TORLEY: Do you want a separate motion for public hearing on each of these?

MR. NUGENT: Yes, separate for each number.

MR. TORLEY: Therefore I would move we set him up for a public hearing for items covered under roman numeral 1 of our agenda.

MR. LUCIA: In addition the sign variances which we've laid out on the record.

MR. TANNER: I'll second it.

ROLL CALL

MR. TANNER	AYE
MR. LANGANKE	AYE
MR. HOGAN	AYE
MR. TORLEY	AYE
MR. NUGENT	AYE

MR. LUCIA: I gave you copy of Section 267B of the Town laws and the requirements for proof on an area variance, this is going to be applicable to all your applications, I put a little X in the margin next to the paragraph that lists the requirements for this board to grant you an area variance. When you come back, I appreciate it if you'd be prepared to speak to the five factors the board needs to find in order to establish an area variance. We'll also need an--

MR. HOGAN: How can we have a public hearing when it doesn't exist until we do number 2?

MR. NUGENT: We have to do it in some kind of sequence.

MR. HOGAN: They should be in some order for the public hearing.

MR. LUCIA: You're correct.

MR. BABCOCK: You need the subdivision before you got a site plan, that is what he is saying.

November 22, 1993

16

MR. LUCIA: On each of these, you'll need to submit an application which Pat has given you separately for each file and you'll need two checks, each both payable to the Town of New Windsor. One for \$150 application fee and the second for \$482 deposit against Town consultant reviews fees and various disbursements the board has in handling your applications.

9/93

TOWN OF NEW WINDSOR
ZONING BOARD OF APPEALS

APPLICATION FOR VARIANCE

93-46

Date: 11/22/93

I. Applicant Information:

- (a) LEONARDO, CONSTANTINE, 18 Oak Street, Newburgh, N. Y. 12550 x
(Name, address and phone of Applicant) (Owner)
- (b) -
(Name, address and phone of purchaser or lessee)
- (c) -
(Name, address and phone of attorney)
- (d) Civil Technologies and Engineering Corp., Rt. 9D, Wappingers Falls, N.Y.
(Name, address and phone of contractor/engineer/architect) 12590

II. Application type:

- ☐ Use Variance ☒ Sign Variance
- ☒ Area Variance ☐ Interpretation

III. Property Information:

- (a) C NYS Routes 94 and 32, Vails Gate, NY 70-1-1.1 72x138 s.f. +
(Zone) (Address) (S B L) (Lot size)
- (b) What other zones lie within 500 ft.? None
- (c) Is a pending sale or lease subject to ZBA approval of this application? Yes
- (d) When was property purchased by present owner? 07/05/33
- (e) Has property been subdivided previously? Yes-by deed
- (f) Has property been subject of variance previously? No
If so, when? -
- (g) Has an Order to Remedy Violation been issued against the property by the Building/Zoning Inspector? Yes
- (h) Is there any outside storage at the property now or is any proposed? Describe in detail: n/a
- _____
- _____
- _____
- _____

IV. Use Variance. n/a

- (a) Use Variance requested from New Windsor Zoning Local Law, Section _____, Table of _____ Regs., Col. _____, to allow:
(Describe proposal) _____
- _____
- _____
- _____
- _____

7

n/a
 (b) The legal standard for a "use" variance is unnecessary hardship. Describe why you feel unnecessary hardship will result unless the use variance is granted. Also set forth any efforts you have made to alleviate the hardship other than this application.

V. Area variance:

(a) Area variance requested from New Windsor Zoning Local Law, Section 48-12, Table of Use/Bulk Regs., Col. D,E,I,N.

<u>Requirements</u>	<u>Proposed or Available</u>	<u>Variance Request</u>
Min. Lot Area		
Min. Lot Width <u>200 ft.</u>	<u>108 ft.</u>	<u>92 ft.</u>
Reqd. Front Yd. <u>60 ft.</u>	<u>9.6 ft.</u>	<u>50.4 ft.</u>
Reqd. Side Yd. _____	_____	_____
Reqd. Rear Yd. _____	_____	_____
Reqd. Street Frontage* _____	_____	_____
Max. Bldg. Hgt. <u>4"/ft=3.2 ft.</u>	<u>22 ft.</u>	<u>18.8 ft.</u>
Min. Floor Area* _____	_____	_____
Dev. Coverage* _____ %	_____ %	_____ %
Floor Area Ratio** _____	_____	_____
Parking Area <u>9</u>	<u>15</u>	<u>-</u>

* Residential Districts only

** No-residential districts only

(b) In making its determination, the ZBA shall take into consideration, among other aspects, the benefit to the applicant if the variance is granted as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. Also, whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance; (2) whether the benefit sought by the applicant can be achieved by some other method feasible for the applicant to pursue other than an area variance; (3) whether the requested area variance is substantial; (4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and (5) whether the alleged difficulty was self-created. Describe why you believe the ZBA should grant your application for an area variance:

(Annexed to application)

(You may attach additional paperwork if more space is needed)

VI. Sign Variance: (See page 3A annexed hereto)

- (a) Variance requested from New Windsor Zoning Local Law, Section _____, Table of _____ Regs., Col. _____.

	<u>Requirements</u>	<u>Proposed or Available</u>	<u>Variance Request</u>
Sign 1	_____	_____	_____
Sign 2	_____	_____	_____
Sign 3	_____	_____	_____
Sign 4	_____	_____	_____

- (b) Describe in detail the sign(s) for which you seek a variance, and set forth your reasons for requiring extra or over size signs.

All signs are constructed of metal frame with plastic back light. Applicant proposes one free-standing sign as depicted on site plan, two "Coastal" signs, one on each canopy, two "C" logos (one on canopy and one on side of building), one wall sign on convenience store facade, and one sign on the Dive Shop. Applicant feels that these signs are crucial in order to remain competitive and identify the various services which are available at this very busy location.

- (c) What is total area in square feet of all signs on premises including signs on windows, face of building, and free-standing signs?

Wall mounted signs: 148 s.f. TOTAL ALL SIGNS: 196 s.f.

Free-standing: 48 s.f.

VII. Interpretation. n/a

- (a) Interpretation requested of New Windsor Zoning Local Law, Section _____, Table of _____ Regs., Col. _____.

- (b) Describe in detail the proposal before the Board:

VIII. Additional comments:

- (a) Describe any conditions or safeguards you offer to ensure that the quality of the zone and neighboring zones is maintained or upgraded and that the intent and spirit of the New Windsor Zoning is fostered. (Trees, landscaping, curbs, lighting, paving, fencing, screening, sign limitations, utilities, drainage.)

Applicant proposes no major changes to the parcel except that the building which houses the Coastal Mart will be renovated. The canopy was added because of the fire supression system which is mandated by the fire code. Most of the structures on this parcel have been in existence for upwards of 20 years. Applicant is in the process of upgrading the structures in order to remain competitive in this area.

IX. Attachments required:

- x Copy of referral from Bldg./Zoning Insp. or Planning Bd.
x Copy of tax map showing adjacent properties.

VI. Sign Variance:

(a) Variance requested from New Windsor Zoning Local Law,
Section 48-12, Table of Use/Bulk Regs., Col. N.

	<u>Requirements</u>	<u>Proposed or Available</u>	<u>Variance Request</u>
1-Freestanding Sign:	40 s.f.	48 s.f.	8 s.f.
" Setback:	15 ft.	6.5 ft.	14.45 ft.
" Height:	15 ft.	19 ft.	4 ft.
3-Wall Signs:			
Coastal (canopy-2)	43 s.f.)	93 s.f.	69.5 s.f.
Dive Shop (bldg.-1)	50 s.f.)		
*Total All Signs:	One	Three	Two

*Only one sign is permitted; request is for 3; variance is for two.

- ☒ Copy of contract of sale, lease or franchise agreement.
- ☒ Copy of deed and title policy.
- ☒ Copy(ies) of site plan or survey showing the size and location of the lot, the location of all buildings, facilities, utilities, access drives, parking areas, trees, landscaping, fencing, screening, signs, curbs, paving and streets within 200 ft. of the lot in question.
- ☒ Copy(ies) of sign(s) with dimensions and location.
- ☒ Two (2) checks, one in the amount of \$150.00 and the second check in the amount of \$482.00, each payable to the TOWN OF NEW WINDSOR.
- ☒ Photographs of existing premises from several angles.

X. Affidavit.

Date: November 22, 1993

STATE OF NEW YORK)

) SS.:

COUNTY OF ORANGE)

The undersigned applicant, being duly sworn, deposes and states that the information, statements and representations contained in this application are true and accurate to the best of his/her knowledge or to the best of his/or information and belief. The applicant further understands and agrees that the Zoning Board of Appeals may take action to rescind any variance granted if the conditions or situation presented herein are materially changed.

Constantine Leonardo
(Applicant)

By: Constantine Leonardo

Sworn to before me this

6th day of December, 1993.
Patricia A. Barnhart

XI. ZBA Action:

PATRICIA A. BARNHART
Notary Public, State of New York
No. 01BA4904434
Qualified in Orange County
Commission Expires August 31, 1995.

(a) Public Hearing date: _____.

(b) Variance: Granted (☐) Denied (☐)

(c) Restrictions or conditions: _____

NOTE: A FORMAL DECISION WILL FOLLOW UPON RECEIPT OF THE PUBLIC HEARING MINUTES WHICH WILL BE ADOPTED BY RESOLUTION OF ZONING BOARD OF APPEALS AT A LATER DATE.

(ZBA DISK#7-080991.AP)

The applicant is seeking area and sign variances on a parcel of land which is in the process of being subdivided even though the original parcel has been in existence for upwards of 20 years. The subdivided parcel consists of a retail gasoline filling station and office and an adjacent structure known as The Dive Shop. Applicant proposes to renovate the gasoline station area by adding a convenience mart. A canopy with a fire suppression system is already in place. The nature of the variances sought consist of bulk variances and sign variances.

The applicant will present testimony at the hearing to demonstrate that there will be no undesirable change produced in the character of the neighborhood and no detriment to nearby properties by the granting of the area variances. The use is a permitted use in the Town of New Windsor Zoning Local Law. The applicant's proposal for renovation of the gasoline station area takes into consideration the neighborhood and the surrounding properties.

Applicant has been to the Town of New Windsor Planning Board and is now in the process of subdividing the parcel into two (2) lots. The applicant is seeking a 92 ft. lot width, 50.4 ft. front yard and 18.8 ft. maximum building height variance. Applicant is also seeking permission to retain several signs on the premises, i.e. free-standing, canopy and wall signs with the lessee's logo.

Applicant's family purchased the original parcel in 1933 and applicant acquired same through an estate. Most of the buildings on the premises have existed for many years. Applicant has had to upgrade the buildings from time to time in order to keep up with the competitive retail gasoline market.

Applicant believes that the requested sign variances should be acted upon favorably as well in order to provide applicant with fair and adequate signage. The signs have been in existence at the site. The most substantial sign relates to a wall mounted sign which is the least intrusive of all signage because it is a part of the building itself.

The applicant submits that the extent of the variances sought are not substantial, particularly since the wall mounted signage is in essence a part of the building and is an identification sign of the lessee's business and is the trademark which is used on all gasoline stations within the corporate structure.

The applicant will present testimony to support the proposition that the granting of the variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood.

The applicant believes that if these variances are granted that they will not produce an undesirable change in the character of the neighborhood or be a detriment to nearby properties.

There is no other method which applicant can feasibly pursue other than the variances sought in this application.

In view of all of the facts and circumstances presented to this Board, applicant respectfully requests that the variances sought be granted.

PUBLIC NOTICE OF HEARING BEFORE
ZONING BOARD OF APPEALS
TOWN OF NEW WINDSOR

PLEASE TAKE NOTICE that the Zoning Board of Appeals of the TOWN OF NEW WINDSOR, New York will hold a Public Hearing pursuant to Section 48-34A of the Zoning Local Law on the following proposition:

Appeal No. 46

Request of CONSTANTINE LEONARDO

for a VARIANCE of Section 48-12-Table of Use/Bulk Regulations, Columns D, E, I, N, of the regulations of the Zoning Local Law to permit:

An existing canopy and retail convenience store within the existing building with insufficient lot width, front yard, more than the allowable building height and more than the allowable signage, sign height and signage set back;

for property situated as follows:

Route 32 and Route 94 (Five Corners), Vails Gate, N. Y. known as tax lot Section 70-Blk. 1-Lot 1.1.

SAID HEARING will take place on the 13th day of December, 19 93 at the New Windsor Town Hall, 555 Union Avenue, New Windsor, New York beginning at 7:30 p.m.

JAMES NUGENT,
Chairman

OFFICE OF THE PLANNING BOARD - TOWN OF NEW WINDSOR
ORANGE COUNTY, NY

Page 1 of 4
Pages
93-46.

NOTICE OF DISAPPROVAL OF SITE PLAN OR SUBDIVISION APPLICATION

PLANNING BOARD FILE NUMBER: 93-22

DATE: 1 NOVEMBER 1993

APPLICANT: Constantine
~~SAATCHI~~ (COAMPAD)

ROUTE 32

REVISED REFERRAL

NEW WINDSOR NY 12553

~~SITE PLAN~~

PLEASE TAKE NOTICE THAT YOUR APPLICATION DATED 2 AUG 1993

FOR (~~SUBDIVISION~~ - SITE PLAN) COASTAL GAS STATION

LOCATED AT NYS ROUTES 94 AND 32

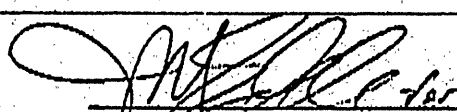
ZONE C

DESCRIPTION OF EXISTING SITE: SEC: 70 BLOCK: 1 LOT: 1.1

PROPOSED CONSTRUCTION OF ~~RETAIL~~
IN EXISTING BLDG. AND PROPOSED
CANOPY.

IS DISAPPROVED ON THE FOLLOWING GROUNDS:

VARIANCES REQUIRED FOR ~~CANOPY~~


MICHAEL BABCOCK,
BUILDING INSPECTOR

<u>REQUIREMENTS</u>	<u>PROPOSED OR AVAILABLE</u>	<u>VARIANCE REQUEST</u>
ZONE <u>C</u> USE <u>A1+B5</u>		
MIN. LOT AREA		
MIN. LOT WIDTH	<u>200 FT.</u>	<u>108 FT</u>
		<u>92 FT</u>

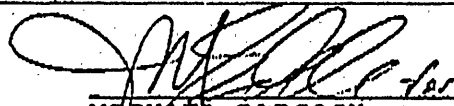
Constantine
APPLICANT: ~~SAMUEL~~ (COAMPAD)
ROUTE 32
NEW WINDSOR NY 12553

REVISED REFERRAL
~~SITE PLAN~~

PLEASE TAKE NOTICE THAT YOUR APPLICATION DATED 2 AUG 1993
FOR (~~SUBDIVISION~~ - SITE PLAN) COASTAL GAS STATION
LOCATED AT NYS ROUTES 94 AND 32
ZONE C

DESCRIPTION OF EXISTING SITE: SEC: 70 BLOCK: 1 LOT: 1.1
PROPOSED CONSTRUCTION OF RETAIL
IN EXISTING BLDG. AND PROPOSED
CANOPY

IS DISAPPROVED ON THE FOLLOWING GROUNDS:
VARIANCES REQUIRED FOR CANOPY


MICHAEL BABCOCK,
BUILDING INSPECTOR

REQUIREMENTS		PROPOSED OR AVAILABLE	VARIANCE REQUEST
ZONE <u>C</u>	USE <u>A1B5</u>		
MIN. LOT AREA			
MIN. LOT WIDTH	<u>200 FT.</u>	<u>108 FT</u>	<u>92 FT</u>
REQ'D FRONT YD	<u>60 FT</u>	<u>9.6 FT</u>	<u>50.4 FT</u>
REQ'D SIDE YD.			
REQ'D TOTAL SIDE YD.			
REQ'D REAR YD.			
REQ'D FRONTAGE			
MAX. BLDG. HT.	<u>4" FT = 3.2 FT</u>	<u>22 FT.</u>	<u>18.8 FT. (Canopy)</u>
FLOOR AREA RATIO			
MIN. LIVABLE AREA			
DEV. COVERAGE			
O/S PARKING SPACES	<u>9</u>	<u>15</u>	

APPLICANT IS TO PLEASE CONTACT THE ZONING BOARD SECRETARY AT:
(914-563-4630) TO MAKE AN APPOINTMENT WITH THE ZONING BOARD
OF APPEALS.

CC: Z.B.A., APPLICANT, P.B. ENGINEER, P.B. FILE

Page 2 of
4 pages

OFFICE OF THE BUILDING INSPECTOR - TOWN OF NEW WINDSOR
ORANGE COUNTY, NY

93-46.

NOTICE OF DISAPPROVAL OF BUILDING PERMIT APPLICATION

DATE: October 29, 1993

APPLICANT: Samuel Leonardo
Rt. 32
New Windsor, N.Y.

PLEASE TAKE NOTICE THAT YOUR APPLICATION DATE: _____

FOR (BUILDING PERMIT): _____

LOCATED AT: Coastal Gasoline Station
NYS Rt. 32 & 94
Vails Gate, N.Y.

LOT 1

SIGNAGE (copy on
site plan.)

ZONE: C

DESCRIPTION OF EXISTING SITE: SEC: 70 BLOCK: 1 LOT: 1.1

IS DISAPPROVED ON THE FOLLOWING GROUNDS:

1. FREE STANDING SIGNAGE SQ FT
2. FREE STANDING SIGNAGE SET BACK
3. FREE STANDING SIGNAGE HEIGHT
4. Variance for more than allowable signs. One permitted;
Request is for 3; Variance is for two.
5. _____


BUILDING INSPECTOR

PERMITTED

PROPOSED OR
AVAILABLE

VARIANCE
REQUEST

ZONE C

USE A-1 + B-5

SIGN

FREESTANDING 40 SQ FT

TWO SIDES 96 SQ FT
40 SQ FT

56 SQ FT
8 SQ FT

DATE: October 29, 1993

APPLICANT: Samuel Leonardo
Rt. 32
New Windsor, N.Y.

PLEASE TAKE NOTICE THAT YOUR APPLICATION DATE: _____

FOR (BUILDING PERMIT): _____

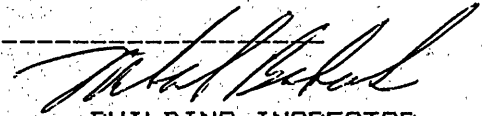
LOCATED AT: Coastal Gasoline Station
NYS Rt. 32 = 94
Vails Gate, N.Y.

LOT 1
SIGNAGE (copy on site plan.)
ZONE: C

DESCRIPTION OF EXISTING SITE: SEC: 70 BLOCK: 1 LOT: 1.1

IS DISAPPROVED ON THE FOLLOWING GROUNDS:

1. FREE STANDING SIGNAGE SQ FT
2. FREE STANDING SIGNAGE SET BACK
3. FREE STANDING SIGNAGE HEIGHT
4. Variance for more than allowable signs. One permitted;
Request is for 3; Variance is for two.
5. _____


BUILDING INSPECTOR

PERMITTED	PROPOSED OR AVAILABLE	VARIANCE REQUEST
ZONE <u>C</u>	USE <u>A-1 + D-5</u>	
SIGN		
FREESTANDING <u>40 SQ FT</u>	<u>TWO SIDES 96 SQ FT</u> <u>48 SQ FT</u>	<u>56 SQ FT</u> <u>8 SQ FT</u>
HEIGHT <u>15 FT</u>	<u>19 FT</u>	<u>4 FT</u>
WALL SIGNS <u>5% WALL AREA</u> <u>= 20.5 SQ FT</u>	<u>COASTAL 43 SQ FT</u> <u>DIVE SHOP 50 SQ FT</u> <u>2</u> <u>93 SQ FT</u>	<u>69.5 SQ FT</u>
TOTAL ALL SIGNS <u>ONE</u>	<u>THREE</u>	<u>TWO</u>
FEET FROM ANY LOT LINE <u>15 FT</u>	<u>6.5 INCHES</u>	<u>14.45 FT</u>

APPLICANT IS TO PLEASE CONTACT THE ZONING BOARD SECRETARY AT
914-563-4630 TO MAKE AN APPOINTMENT WITH THE ZONING BOARD OF
APPEALS.

CC: Z.B.A., APPLICANT, B.P. FILE

Anthony N. Marshall
121 Cedar Ave.
New Windsor, N.Y. 12553

Nov. 24, 1993

To Whomever it May Concern:
STATE OF NEW YORK)
COUNTY OF ORANGE) ss.:

I, Anthony N. Marshall, of 121 Cedar Avenue, New Windsor,
N.Y., hereby attest that I have known Constantine Leonardo
for seventy years and hereby confirm that Constantine
Leonardo had lived in the building on Route 94, (known
today as the dive shop) in the upper apartment next door
to my mother's old property, (known today as the Monroe
Muffler Building), from 1957 to April 1993.

Sincerely,
Anthony Marshall

Anthony N. Marshall

Sworn to before me this
6th day of December, 1993.

Patricia A. Barnhart
Notary Public

PATRICIA A. BARNHART
Notary Public, State of New York
No. 01BA4904434
Qualified in Orange County
Commission Expires August 31, 1995.

AMENDMENT TO THE LEASE BETWEEN THE REALTY COMPANY
AND CONSTANTINE LEONARDO DATED

Amendment date: 11-29-93

It is hereby agreed between the lessor and the lessees
of both properties, which are Coastal Gas Station and
The Dive Shop, that when it becomes necessary for
customers of either Coastal Gas Station or The Dive Shop
to park, the parking areas of both properties will be
shared. And it is also agreed that both parties have
permission of egress and access in order to park.

Lessor Signature: Constantine M Leonardo
Constantine Leonardo

Lessee Signature: Mitch
Mitch

Lessee Signature: John Antinori
John Antinori

Pls. publish immediately. Send bill to: Applicant at below address (Cheese Store) ①

PUBLIC NOTICE OF HEARING BEFORE

ZONING BOARD OF APPEALS

TOWN OF NEW WINDSOR

PLEASE TAKE NOTICE that the Zoning Board of Appeals of the TOWN OF NEW WINDSOR, New York will hold a Public Hearing pursuant to Section 48-34A of the Zoning Local Law on the following proposition:

Appeal No. 46

Request of CONSTANTINE LEONARDO

for a VARIANCE of Section 48-12-Table of Use/Bulk Regulations, Columns D, E, I, N, of the regulations of the Zoning Local Law to permit:

An existing canopy and retail convenience store within the existing building with insufficient lot width, front yard, more than the allowable building height and more than the allowable signage, sign height and signage set back;

for property situated as follows:

Route 32 and Route 94 (Five Corners), Vails Gate, N. Y. known as tax lot Section 70-Blk. 1-Lot 1.1.

SAID HEARING will take place on the 13th day of December, 1993 at the New Windsor Town Hall, 555 Union Avenue, New Windsor, New York beginning at 7:30 p.m.

JAMES NUGENT,
Chairman

By: Patricia A. Barnhart, Secy.

Pls. call to confirm receipt 663-4630

ZONING BOARD OF APPEALS : TOWN OF NEW WINDSOR
COUNTY OF ORANGE : STATE OF NEW YORK

-----x
In the Matter of Application for Variance of

Constantine Leonardo

Applicant.

AFFIDAVIT OF
SERVICE
BY MAIL

#93-46.
-----x

STATE OF NEW YORK)

) SS.:

COUNTY OF ORANGE)

PATRICIA A. BARNHART, being duly sworn, deposes and says:

That I am not a party to the action, am over 18 years of age
and reside at 7 Franklin Avenue, New Windsor, N. Y. 12553.

On November 30, 1993, I compared the 38 addressed
envelopes containing the attached Notice of Public Hearing with
the certified list provided by the Assessor regarding the above
application for variance and I find that the addressees are
identical to the list received. I then mailed the envelopes in a
U. S. Depository within the Town of New Windsor.

Patricia A. Barnhart
Patricia A. Barnhart

Sworn to before me this
30th day of November, 1993.

Patricia E. O'Brien
Notary Public

PATRICIA E. O'BRIEN
Notary Public, State of New York
Residing in County of Orange
No. 4841498
Commission Expires Feb. 28, 1994

(TA DOCDISK#7-030586.AOS)

BOUNDARY AGREEMENT

June 4, 1982

Agreement made this 25th day of June, 1982, between
CONSTANTINE LEONARDO, residing at 18 Oak Street, City of Newburgh,
County of Orange, State of New York, hereinafter referred to
as CONSTANTINE, and

SAMUEL G. LEONARDO, residing at 7 Dogwood Hills Road,
Town of Newburgh, County of Orange, State of New York,
hereinafter referred to as SAMUEL.

W I T N E S S E T H :

WHEREAS, Catherine Leonardo, late of the City of Newburgh,
Orange County, State of New York, mother of the said CONSTANTINE
and SAMUEL, owned certain real property located at Vails Gate
in the Town of New Windsor, Orange County acquired by referee's
deed from John Corwin dated June 3, 1933 and recorded in the
Orange County Clerk's office on July 5, 1933 in Liber 740 cp 254,
and

WHEREAS, the said Catherine Leonardo died on the 13th day
of April, 1970 leaving a Last Will and Testament which was
fully probated by the Orange County Surrogate on the 23rd day
of June, 1970 and under Article Second thereof devised the
said Vails Gate parcel to her surviving husband, Samuel Leonardo,
Sr., for his lifetime with a remainder interest therein to
CONSTANTINE and SAMUEL on the death of the said life tenant, and

WHEREAS, the said Samuel Leonardo, Sr., the surviving
spouse of Catherine Leonardo, deceased, died on the 9th day of
January, 1978, and

WHEREAS, the description in the said Will was not precisely
set forth reference being made to the northerly portion passing
to CONSTANTINE and the southerly portion passing to SAMUEL, and

Agreement made this 25th day of June, 1982, between
CONSTANTINE LEONARDO, residing at 18 Oak Street, City of Newburgh,
County of Orange, State of New York, hereinafter referred to
as CONSTANTINE, and

SAMUEL G. LEONARDO, residing at 7 Dogwood Hills Road,
Town of Newburgh, County of Orange, State of New York,
hereinafter referred to as SAMUEL.

W I T N E S S E T H :

WHEREAS, Catherine Leonardo, late of the City of Newburgh,
Orange County, State of New York, mother of the said CONSTANTINE
and SAMUEL, owned certain real property located at Vails Gate
in the Town of New Windsor, Orange County acquired by referee's
deed from John Corwin dated June 3, 1933 and recorded in the
Orange County Clerk's office on July 5, 1933 in Liber 740 cp 254,
and

WHEREAS, the said Catherine Leonardo died on the 13th day
of April, 1970 leaving a Last Will and Testament which was
fully probated by the Orange County Surrogate on the 23rd day
of June, 1970 and under Article Second thereof devised the
said Vails Gate parcel to her surviving husband, Samuel Leonardo,
Sr., for his lifetime with a remainder interest therein to
CONSTANTINE and SAMUEL on the death of the said life tenant, and

WHEREAS, the said Samuel Leonardo, Sr., the surviving
spouse of Catherine Leonardo, deceased, died on the 9th day of
January, 1978, and

WHEREAS, the description in the said Will was not precisely
set forth reference being made to the northerly portion passing
to CONSTANTINE and the southerly portion passing to SAMUEL, and

WHEREAS, the parties hereto desire to fix and definitely establish the boundary line between the two portions so devised and owned by them.

NOW, THEREFORE, in consideration of the premises and the sum of ONE DOLLAR (\$1.00) by each of the parties hereto to the other in hand paid, receipt of which is hereby acknowledged, the parties for themselves, their distributees and personal representatives covenant and agree that the boundary line between the northerly and southerly portion of the lands owned by Catherine Leonardo and devised by her as aforesaid be established as a line described as follows:

Beginning at a point marked by an iron rod on the easterly side of New York State Route 32 south 6° , $32' 49''$ west 61.78 feet from the intersection of the southerly side of New York State Route 94 and the easterly side of New York State Route 32 and runs thence;

- (1) South $76^{\circ} 15' 23''$ east a distance of 81.31 feet to an iron rod marking the southeasterly corner of the gas station parcel said course running along the division line of the premises heretofore leased to the Amerada Hess Corporation on the north and the so-called Club 32 parcel on the south and running thence;
- (2) In a generally northeasterly direction approximately 25 feet to the point formed by the intersection of a line in extension northerly of the west face of the so-called Pizza Factory addition of Samuel G. Leonardo and a line running parallel to and 6' northerly measured on the perpendicular from the north face of said addition and running thence;
- (3) In an easterly direction on a course which is parallel to and 6' northerly measured on the perpendicular from the north face of said building addition to a point in the east line of the original Catherine Leonardo parcel being land now or formerly of one Marshall.

And CONSTANTINE remises, releases and quitclaims to SAMUEL, his distributees, personal representatives and assigns forever all of his right, title and interest in and to any of the lands lying southerly of the boundary line herein established, as above, and SAMUEL remises, releases and quitclaims to CONSTANTINE, his distributees, personal representatives and assigns forever all of his right, title and interest in and to any of the lands lying northerly of the boundary line herein established, as above, provided, however, CONSTANTINE confirms the right of SAMUEL, as a license right, to continue to use and maintain the sewer and water lines running northerly from the so-called Pizza Factory addition to Route 94 for a period of ten years from July 1, 1982 by which date SAMUEL agrees that he shall no longer have the license right to use the same and will make other arrangements for the service provided by the said lines

This agreement shall run with the title to the land and be binding upon and enure to and for the benefit of the respective distributees, personal representatives and assigns of each of the parties hereto

IN WITNESS WHEREOF, the parties have set their hands and seals as of the day and year first above written.

Written:
Leonardo

Constantine Leonardo
CONSTANTINE LEONARDO
Samuel G. Leonardo
SAMUEL G. LEONARDO

STATE OF NEW YORK:
: ss.:
COUNTY OF ORANGE :

On the *2nd* day of *August*, 1982, before me personally came CONSTANTINE LEONARDO, to me known to be the individual described in, and who executed the foregoing instrument, and acknowledged that he executed the same.

STATE OF NEW YORK:
: ss.:
COUNTY OF ORANGE :

Julius Larkin Hoyt
Notary Public
JULIUS LARKIN HOYT
NOTARY PUBLIC, State of New York
Resident in and for Orange County
Commission Expires *March 20, 1984*

...releases and guarantees to CONSTANTINE, his distributees, personal representatives and assigns forever all of his right, title and interest in and to any of the lands lying northerly of the boundary line herein established, as above, provided, however, CONSTANTINE confirms the right of SAMUEL, as a license right, to continue to use and maintain the sewer and water lines running northerly from the so-called Pizza Factory addition to Route 94 for a period of ten years from July 1, 1982 by which date SAMUEL agrees that he shall no longer have the license right to use the same and will make other arrangements for the service provided by the said lines

This agreement shall run with the title to the land and be binding upon and enure to and for the benefit of the respective distributees, personal representatives and assigns of each of the parties hereto

IN WITNESS WHEREOF, the parties have set their hands and seals as of the day and year first above written.

Constantine Leonardo
Constantine Leonardo

Samuel G. Leonardo
SAMUEL G. LEONARDO

STATE OF NEW YORK:

: ss.:

COUNTY OF ORANGE :

On the 2nd day of August, 1982, before me personally came CONSTANTINE LEONARDO, to me known to be the individual described in, and who executed the foregoing instrument, and acknowledged that he executed the same.

Julius Larkin Hoyt
Notary Public
JULIUS LARKIN HOYT
NOTARY PUBLIC, State of New York
Resident in and for Orange County
Commission Expires March 20, 1984

STATE OF NEW YORK:

: ss.:

COUNTY OF ORANGE :

On the 2nd day of August, 1982, before me personally came SAMUEL G. LEONARDO, to me known to be the individual described in, and who executed the foregoing instrument, and acknowledged that he executed the same.

Julius Larkin Hoyt
Notary Public
JULIUS LARKIN HOYT
NOTARY PUBLIC, State of New York
Resident in and for Orange County
Commission Expires March 20, 1984

2228

135



1763

TOWN OF NEW WINDSOR

555 UNION AVENUE
NEW WINDSOR, NEW YORK 12553

38

November 9, 1993

Mr. Samuel Leonardo
Route 32 & 94
Vails Gate, NY 12584

Re: Tax Map Parcel #70-1-1.1 & #70-1-1.2

Dear Mr. Leonardo:

According to our records, the attached list of property owners are within five hundred (500) feet of the above referenced property.

The charge for this service is \$55.00, minus your deposit of \$25.00. Please remit the balance of \$30.00 to the Town Clerk's office.

Sincerely,

Leslie Cook /po
LESLIE COOK
Sole Assessor

LC/po
Attachments

cc: ~~Ray Barnhart~~

House of Apache Properties LTD
52 Elm St.
Huntington, NY 11743

Windsor Enterprises, Inc.
PO Box 928
Vails Gate, NY 12584

C.P. Mans
PO Box 247
Vails Gate, NY 12584

Bahri, Jamil &
Motran, Jamal
16 Academy Ave.
Chester, NY 10918

Panella, Emilio, As Trustee
Po Box 473
Vails Gate, NY 12584

Barbaro, John
6 Truex Dr.
New Windsor, NY 12553

Lekis, Edward F. & JoAnn M.
PO Box 204
Vails Gate, NY 12584

Melore, Philip M. & Christina M.
10 Truex Circle
New Windsor, NY 12553

Vander Maas, Brian K. & Bridgette A.
12 Truex Dr.
New Windsor, NY 12553

Fernandez, Michael A. & Michael R.
9 Truex Circle
New Windsor, NY 12553

Tosco, Salvatore & Carolina
7 Truex Circle
New Windsor, NY 12553

Bagarozzi, Michael & Grimalda, Sanchez
18 Truex Dr.
New Windsor, NY 12553

Bencosme, Miguel R. & Barbara D.
16 Truex Dr.
New Windsor, NY 12553

Wynder, Jr., Kenneth N.
14 Truex Dr.
New Windsor, NY 12553

Casaccio, Paul & Virginia
41 Barclay Rd.
New Windsor, NY 12553

Primavera, Joseph A.
Box 88
Marlboro, NY 12542

Angelo Rosmarino Enterprises, Inc.
PO Box 392
Vails Gate, NY 12584

Amerada Hess Corp.
c/o Dean E. Cole, Manager Prop. Tax Dept.
1 Hess Plaza
Woodbridge, NJ 07095

Korngold, Louis MD
135 Strawtown Rd.
W. Nyack, NY 10994

Branbury Associates
765 Elmgrove Rd.
Rochester, NY 14624

TGS Associates, Inc.
15 E. Market St.
Red Hook, NY 12571

S&S Properties, Inc.
123 Quaker Rd.
Highland Mills, NY 10930

Conna Corporation
Real Estate Dept.
c/o Dairy Mart #6668
210 Broadway
E. Cuyahoga Falls, OH 44222

Central Hudson Gas & Electric Corporation
284 South Ave.
Poughkeepsie, NY 12601

McDonald Corp 031/0159
PO Box 66207
AMF Ohare
Chicago, IL 60666

Mobil Oil Corporation
Property Tax Department
PO Box 290
Dallas, TX 75221

NYS Dept. of Transportation
Office of the State Comptroller
A.E. Smith Office Bldg.
Albany, NY 12236

Slepoy, William & Andrew & Jacqueline &
Gardner, Fred
c/o Friendly Ice Cream Corp.
1855 Boston Rd.
Wilbraham, MA 01095

Slepoy, William & Andrew & Jacqueline &
Garner, Fred
c/o Slepoy/Gardner
104 S. Central Ave., Room 20
Valley Stream, NY 11580

Scheiner, Alan & Gale
20 Truex Dr.
New Windsor, NY 12553

Norstar Bank of Upstate NY
Facilities Management
PO Box 911
Newburgh, NY 12550

Mans & Miller Auto Centers, Inc.
PO Box 247
Vails Gate, NY 12584

Shedden, Joan A.
Box 608A
Vails Gate, NY 12584

Aquino, John J. &
Mellick, Gregory
c/o Gregory Mellick
135 W. Nyack Rd.
Nanuet, NY 10954

Albany Savings Bank
94 Broadway
Newburgh, NY 12550

VGR Associates
c/o Howard W. Rosenblum
300 Martine Ave.
White Plains, NY 10601

Prekas, Steve
3 Warden Circle
Newburgh, NY 12550

~~Prekas, Steve~~
~~c/o ACSIS Foods, Inc.~~
~~PO Box 212~~
~~Vails Gate, NY 12584~~

R&S Foods, Inc.
249 North Craig St.
Pittsburgh, PA 15213

LEONARDO APPLICATION BEFORE ZBA

ADDITIONAL DOCUMENTS REQUIRED FOR PUBLIC HEARING:

1. Affidavit of owner or other evidence which proves that apartment above Dive Shop has been occupied continuously since before 1965 to present date.
2. Amendment to Lease. *-ask Dan Lucia what they need.*
3. Add garage parking space on site plan (within the Dive Shop).
4. Copies of new deeds when property was subdivided by deed in 1984.
5. Delineate each entrance, exit and each parking space on the site plan for both parcels.

INTER OFFICE CORRESPONDENCE

TO: Town Planning Board
FROM: Town Fire Inspector
DATE: 24 September 1993
SUBJECT: Leonardo Subdivision


PLANNING BOARD REFERENCE NUMBER: PB-93-25
DATED: 15 September 1993

FIRE PREVENTION REFERENCE NUMBER: FPS-93-053

A review of the above referenced subject subdivision plan was conducted on 20 September 1993.

This subdivision plan is acceptable.

PLANS DATED: 4 September 1993.


Robert F. Rodgers; JCA
Fire Inspector

RFR:mr
Att.

Deed

In the presence of Geo. J. Wittmann

Frederic A. Deland L. S.

Residing at Balmville, Newburgh,

State of New York

On this 21 day of June

County of Orange SS.

1933 before me personally

came George J. Wittman with whom I am personally acquainted, to me known and to me to be the subscribing witness to the foregoing instrument, who, being me duly sworn, did depose and say that he resides in Newburgh, that he is personally acquainted with Frederic A. Deland and knows said person to be the person described in and who executed the foregoing instrument; that he, the said subscribing witness, was present and saw the said person execute the same and that he duly acknowledged to him, the said subscribing witness, that he executed the same and that he thereupon subscribed his name as witness thereto.

Edw. F. Dillon, Notary Public

A true record entered July 5, 1933 at 9 A. M.

C. E. Dunsenbury

For G. J. W.,
am D. C.
2228, 85
173, August
4, 1912

This Deed, made the 30th day of June, Nineteen hundred and thirteen between John B. Corwin, of the City of Newburgh, Orange Co. N. Y., duly appointed in the action hereinafter mentioned, grantor, and Caterina Leonardo, of the same place, grantee, Witnesseth, that the grantor, the referee appointed in an action between Caterina Leonardo, plaintiff, and George G. Lillian M. Clark and Albert Longinott, defendants, foreclosing a mortgage on the tenth day of August, 1931, in the office of the Clerk of the County of Orange, in Liber 646 of Mortgages, at page 247, in pursuance of a judgment at a special term of the Supreme Court held in and for the County of Orange, the County Court House, in the City of Newburgh, New York, on the seventh day of April 1933, and in consideration of Five hundred and 00/100 dollars (\$500) paid by the grantee, being the highest sum bid at the sale under said judgment does hereby grant and convey unto the grantee,

ALL that certain lot, piece or parcel of land situate, lying and being in the Town of New Windsor, in the County of Orange and State of New York and bounded and described as follows, to wit:

BEGINNING on the west side of an elm tree standing on the south junction of the New Windsor and Blooming Grove Turnpike Road and the Clover Road at Vails Gate in said Town, and running thence along the east side of the Clover Road south forty five (45) minutes west two hundred and twenty eight (228) feet to the west face of a stone wall in the line of lands of David Scanlon; thence along said Scanlon's lands north seventy six (76) degrees thirty (30) minutes east one hundred and seventy seven (177) feet to a point in the center of a wall, being the southwest corner of lands of one Armstrong; thence along said Armstrong's lands north fifteen (15) degrees and fifteen (15) minutes west two hundred and thirty three (233) feet to the south line of the Turnpike afore mentioned and thence along the same south seventy six (76) degrees and thirty (30) minutes west one hundred and twenty five (125) feet to the place of beginning.

Leonardo by

her heirs and assigns

In presence of

One fifty

State of N.

County of

City of Ne

appeared J

to me pers

who execut

uted the

A true rec

three betw

State of

husband a

ants by t

the first

United St

of the se

part, the

Village c

as Lot No

made by C

Orange Co

dated Ju

recorded

of Deeds

the part

premises

assigns

Daniel A

convey t

the said

Containing about one (1) acre of land.

Being the ^{same} premises which were conveyed to the mortgagors by Caterina Leonardo by deed dated even date with said Mortgage.

To have and to hold the premises herein granted unto the grantee, her heirs and assigns forever. In Witness Whereof, the grantor has hereunto set hand and seal.

In presence of Beatrice I. W. Harrison
One fifty cent stamp annexed and cancelled.

John B. Corwin, Referee L. S.

State of New York
County of Orange SS
City of Newburgh

On this 30th day of June, Nineteen hundred and thirty three before me the subscriber, personally

appeared John B. Corwin, as Referee, in the above mentioned foreclosure action, to me personally known, and known to me to be the same person described in, and who executed the within instrument, and he duly acknowledged to me that he executed the same as such Referee.

Beatrice I. W. Harrison, Notary Public, Orange County

A true record entered July 5, 1933 at 9 A. M.

John B. Corwin Clerk.

This Indenture made the third day of July, nineteen hundred and thirty three between Daniel A. Decker, of the village of Walden, County of Orange and State of New York, party of the first part, and Daniel A. Decker and Ella Decker, husband and wife, both of the Village of Walden, Orange County, New York, as tenants by the entirety, parties of the second part, Witnesseth, that the party of the first part, in consideration of Ten dollars (\$10.00) lawful money of the United States, and other good and valuable considerations, paid by the parties of the second part, does hereby grant and release unto the parties of the second part, their heirs and assigns forever,

ALL that tract or parcel of land lying situate and being in the Village of Walden, County of Orange, and State of New York, being and designated as Lot Number One hundred twenty five (125) on map of lands of C. Louis Snider, made by Coldwell & Garrison, Engineers, and filed in the office of the Clerk of Orange County.

Being the same lands described and conveyed in that certain deed dated July 1, 1931 from Martin A. Noonan and Anne Noonan to Daniel A. Decker recorded in the office of the Clerk of Orange County July 3, 1931 in Liber 719 of Deeds at page 459.

Together with the appurtenances and all the estate and rights of the party of the first part in and to said premises. To have and to hold the premises herein granted unto the parties of the second part, their heirs and assigns forever. And said Daniel A. Decker covenants as follows: First. That said Daniel A. Decker is seized of said premises in fee simple, and has good right to convey the same; Second. That the parties of the second part shall quietly enjoy the said premises; Third. That the said premises are free from incumbrances;

This Agreement BETWEEN

CONSTANTINE LEONARDO, residing at 18 Oak Street, Newburgh, New York 12550

as Landlord

and

M & A REALTY CORP., 785 Broadway, Kingston, New York 12401

as Tenant

Witnesseth: The Landlord hereby leases to the Tenant the following premises:

(SEE "SCHEDULE A" ATTACHED HERETO)

for the term of Ten (10) years

to commence from the 1st day of July 19 93 and to end on the

30th day of June 2003 ~~to~~ to be used and occupied only for

retail gasoline sales and related commercial activities as permitted by
State and municipal authorities, and a convenience store accessory to the
retail gasoline sales activity.

1st. That the Tenant shall pay the annual rent of

See paragraph "28" of Rider

upon the conditions and covenants following:

said rent to be paid in equal monthly payments in advance on the 1st
term aforesaid, as follows:

day of each and every month during the

See paragraph "29" or Rider

2nd. That the Tenant shall take good care of the premises and shall, at the Tenant's own cost and expense make all repairs

and at the end or other expiration of the term, shall deliver up the demised premises in good order or condition, damages by
the elements excepted.

3rd. That the Tenant shall promptly execute and comply with all statutes, ordinances, rules, orders, regulations and require-
ments of the Federal, State and Local Governments and of any and all their Departments and Bureaus applicable to said

Witnesseth: The Landlord hereby leases to the Tenant the following premises:

(SEE "SCHEDULE A" ATTACHED HERETO)

for the term of Ten (10) years

to commence from the 1st day of July 19 93 and to end on the

30th day of June 2003 ~~19~~ to be used and occupied only for

retail gasoline sales and related commercial activities as permitted by State and municipal authorities, and a convenience store accessory to the retail gasoline sales activity.

upon the conditions and covenants following:

1st. That the Tenant shall pay the annual rent of See paragraph "28" of Rider

said rent to be paid in equal monthly payments in advance on the 1st day of each and every month during the term aforesaid, as follows:

See paragraph "29" or Rider

2nd. That the Tenant shall take good care of the premises and shall, at the Tenant's own cost and expense make all repairs

and at the end or other expiration of the term, shall deliver up the demised premises in good order or condition, damages by the elements excepted.

3rd. That the Tenant shall promptly execute and comply with all statutes, ordinances, rules, orders, regulations and requirements of the Federal, State and Local Governments and of any and all their Departments and Bureaus applicable to said premises, for the correction, prevention, and abatement of nuisances or other grievances, in, upon, or connected with said premises during said term; and shall also promptly comply with and execute all rules, orders and regulations of the New York Board of Fire Underwriters, or any other similar body, at the Tenant's own cost and expense.

4th. That the Tenant, successors, heirs, executors or administrators shall not assign this agreement, or underlet or underlease the premises, or any part thereof, or make any alterations on the premises, without the Landlord's consent in writing; or occupy, or permit or suffer the same to be occupied for any business or purpose deemed disreputable or extra-hazardous on account of fire, under the penalty of damages and forfeiture, and in the event of a breach thereof, the term herein shall immediately cease and determine at the option of the Landlord as if it were the expiration of the original term.

5th. Tenant must give Landlord prompt notice of fire, accident, damage or dangerous or defective condition. If the Premises can not be used because of fire or other casualty, Tenant is not required to pay rent for the time the Premises are unusable. If part of the Premises can not be used, Tenant must pay rent for the usable part. Landlord shall have the right to decide which part of the Premises is usable. Landlord need only repair the damaged structural parts of the Premises. Landlord is not required to repair or replace any equipment, fixtures, furnishings or decorations unless originally installed by Landlord. Landlord is not responsible for delays due to settling insurance claims, obtaining estimates, labor and supply problems or any other cause not fully under Landlord's control.

If the fire or other casualty is caused by an act or neglect of Tenant, Tenant's employees or invitees, or at the time of the fire or casualty Tenant is in default in any term of this Lease, then all repairs will be made at Tenant's expense and Tenant must pay the full rent with no adjustment. The cost of the repairs will be added rent.

Landlord has the right to demolish or rebuild the Building if there is substantial damage by fire or other casualty. Landlord may cancel this Lease within 30 days after the substantial fire or casualty by giving Tenant notice of Landlord's intention to demolish or rebuild. The Lease will end 30 days after Landlord's cancellation notice to Tenant. Tenant must deliver the Premises to Landlord on or before the cancellation date in the notice and pay all rent due to the date of the fire or casualty. If the Lease is cancelled Landlord is not required to repair the Premises or Building. The cancellation does not release Tenant of liability in connection with the fire or casualty. This Section is intended to replace the terms of New York Real Property Law Section 227.

6th. The said Tenant agrees that the said Landlord and the Landlord's agents and other representatives shall have the right to enter into and upon said premises, or any part thereof, at all reasonable hours for the purpose of examining the same, or making such repairs or alterations therein as may be necessary for the safety and preservation thereof.

7th. The Tenant also agrees to permit the Landlord or the Landlord's agents to show the premises to persons wishing to hire or purchase the same; and the Tenant further agrees that on and after the sixth month, next preceding the expiration of the term hereby granted, the Landlord or the Landlord's agents shall have the right to place notices on the front of said premises, or any part thereof, offering the premises "To Let" or "For Sale", and the Tenant hereby agrees to permit the same to remain thereon without hindrance or molestation.

8th. That if the said premises, or any part thereof shall be deserted or become vacant during said term, or if any default be made in the payment of the said rent or any part thereof, or if any default be made in the performance of any of the covenants herein contained, the Landlord or representatives may re-enter the said premises by force, summary proceedings or otherwise, and remove all persons therefrom, without being liable to prosecution therefor, and the Tenant hereby expressly waives the service of any notice in writing of intention to re-enter, and the Tenant shall pay at the same time as the rent becomes payable under the terms hereof a sum equivalent to the rent reserved herein, and the Landlord may rent the premises on behalf of the Tenant, reserving the right to rent the premises for a longer period of time than fixed in the original lease without releasing the original Tenant from any liability, applying any moneys collected, first to the expense of resuming or obtaining possession, second to restoring the premises to a rentable condition, and then to the payment of the rent and all other charges due and to grow due to the Landlord, any surplus to be paid to the Tenant, who shall remain liable for any deficiency.

9th. Landlord may replace, at the expense of Tenant, any and all broken glass in and about the demised premises. Landlord may insure, and keep insured, all plate glass in the demised premises for and in the name of Landlord. Bills, for the premiums therefor shall be rendered by Landlord to Tenant at such times as Landlord may elect, and shall be due from, and payable by Tenant when rendered, and the amount thereof shall be deemed to be, and be paid as, additional rental. Damage and injury to the said premises, caused by the carelessness, negligence or improper conduct on the part of the said Tenant or the Tenant's agents or employees shall be repaired as speedily as possible by the Tenant at the Tenant's own cost and expense.

10th. That the Tenant shall neither encumber nor obstruct the sidewalk in front of, entrance to, or halls and stairs of said premises, nor allow the same to be obstructed or encumbered in any manner.

11th. The Tenant shall neither place, or cause or allow to be placed, any sign or signs of any kind whatsoever at, in or about the entrance to said premises or any other part of same, except in or at such place or places as may be indicated by the Landlord and consented to by the Landlord in writing. And in case the Landlord or the Landlord's representatives shall deem it necessary to remove any such sign or signs in order to paint the said premises or the building wherein same is situated or make any other repairs, alterations or improvements in or upon said premises or building or any part thereof, the Landlord shall have the right to do so, providing the same be removed and replaced at the Landlord's expense, whenever the said repairs, alterations or improvements shall be completed.

12th. That the Landlord is exempt from any and all liability for any damage or injury to person or property caused by or resulting from steam, electricity, gas, water, rain, ice or snow, or any leak or flow from or into any part of said building or from any damage or injury resulting or arising from any other cause or happening whatsoever unless said damage or injury be caused by or be due to the negligence of the Landlord.

13th. That if default be made in any of the covenants herein contained, then it shall be lawful for the said Landlord to re-enter the said premises, and the same to have again, re-possess and enjoy. The said Tenant hereby expressly waives the service of any notice in writing of intention to re-enter.

14th. That this instrument shall not be a lien against said premises in respect to any mortgages that are now on or that hereafter may be placed against said premises, and that the recording of such mortgage or mortgages shall have preference and precedence and be superior and prior in lien of this lease, irrespective of the date of recording and the Tenant agrees to execute without cost, any such instrument which may be deemed necessary or desirable to further effect the subordination of this lease to any such mortgage or mortgages, and a refusal to execute such instrument shall entitle the Landlord, or the Landlord's assigns and legal representatives to the option of cancelling this lease without incurring any expense or damage and the term hereby granted is expressly limited accordingly.

15th. The Tenant has this day deposited with the Landlord the sum of \$ 3,600.00 as security for the full and faithful performance by the Tenant of all the terms, covenants and conditions of this lease upon the Tenant's part to be performed, which said sum shall be returned to the Tenant after the time fixed as the expiration of the term herein, provided the Tenant has fully and faithfully carried out all of said terms, covenants and conditions on Tenant's part to be performed. In the event of a bona fide sale, subject to this lease, the Landlord shall have the right to transfer the security to the vendee for the benefit of the Tenant and the Landlord shall be considered released by the Tenant from all liability for the return of such security; and the Tenant agrees to look to the new Landlord solely for the return of the said security, and it is agreed that this shall apply to every transfer or assignment made of the security to a new Landlord.

16th. That the security deposited under this lease shall not be mortgaged, assigned or encumbered by the Tenant without the written consent of the Landlord.

17th. It is expressly understood and agreed that in case the demised premises shall be deserted or vacated, or if default be made in the payment of the rent or any part thereof as herein specified, or if, without the consent of the Landlord, the Tenant shall sell, assign, or mortgage this lease or if default be made in the performance of any of the covenants and agreements in this lease contained on the part of the Tenant to be kept and performed, or if the Tenant shall fail to comply with any of the statutes, ordinances, rules, orders, regulations and requirements of the Federal, State and Local Governments or of any and all their Departments and Bureaus, applicable to said premises, or if the Tenant shall file or there be filed against Tenant a petition in bankruptcy or arrangement, or Tenant be adjudicated a bankrupt or make an assignment for the benefit of creditors or take advantage of any insolvency act, the Landlord may, if the Landlord so elects, at any time thereafter terminate this lease and the term hereof, on giving to the Tenant five days' notice in writing of the Landlord's intention so to do, and this lease and the term hereof shall expire and come to an end on the date fixed in such notice as if the said date were the date originally fixed in this lease for the expiration hereof. Such notice may be given by mail to the Tenant addressed to the demised premises.

18th. Tenant shall pay to Landlord the rent or charge, which may, during the demised term, be assessed or imposed for the water used or consumed in or on the said premises, whether determined by meter or otherwise, as soon as and when the same may be assessed or imposed, and will also pay the expenses for the setting of a water meter in the said premises should the latter be required. Tenant shall pay Tenant's proportionate part of the sewer rent or charge imposed upon the building. All such rents or charges or expenses shall be paid as and when the same shall be assessed or imposed.

the premises contained, the Landlord or representatives may re-enter the said premises by force, summary proceedings or otherwise, and remove all persons therefrom, without being liable to prosecution therefor, and the Tenant hereby expressly waives the service of any notice in writing of intention to re-enter, and the Tenant shall pay at the same time as the rent becomes payable under the terms hereof a sum equivalent to the rent reserved herein, and the Landlord may rent the premises on behalf of the Tenant, reserving the right to rent the premises for a longer period of time than fixed in the original lease without releasing the original Tenant from any liability, applying any moneys collected, first to the expense of resuming or obtaining possession, second to restoring the premises to a rentable condition, and then to the payment of the rent and all other charges due and to grow due to the Landlord, any surplus to be paid to the Tenant, who shall remain liable for any deficiency.

9th. Landlord may replace, at the expense of Tenant, any and all broken glass in and about the demised premises. Landlord may insure, and keep insured, all plate glass in the demised premises for and in the name of Landlord. Bills, for the premiums therefor shall be rendered by Landlord to Tenant at such times as Landlord may elect, and shall be due from, and payable by Tenant when rendered, and the amount thereof shall be deemed to be, and be paid as, additional rental. Damage and injury to the said premises, caused by the carelessness, negligence or improper conduct on the part of the said Tenant or the Tenant's agents or employees shall be repaired as speedily as possible by the Tenant at the Tenant's own cost and expense.

10th. That the Tenant shall neither encumber nor obstruct the sidewalk in front of, entrance to, or halls and stairs of said premises, nor allow the same to be obstructed or encumbered in any manner.

11th. The Tenant shall neither place, or cause or allow to be placed, any sign or signs of any kind whatsoever at, in or about the entrance to said premises or any other part of same, except in or at such place or places as may be indicated by the Landlord and consented to by the Landlord in writing. And in case the Landlord or the Landlord's representatives shall deem it necessary to remove any such sign or signs in order to paint the said premises or the building wherein same is situated or make any other repairs, alterations or improvements in or upon said premises or building or any part thereof, the Landlord shall have the right to do so, providing the same be removed and replaced at the Landlord's expense, whenever the said repairs, alterations or improvements shall be completed.

12th. That the Landlord is exempt from any and all liability for any damage or injury to person or property caused by or resulting from steam, electricity, gas, water, rain, ice or snow, or any leak or flow from or into any part of said building or from any damage or injury resulting or arising from any other cause or happening whatsoever unless said damage or injury be caused by or be due to the negligence of the Landlord.

13th. That if default be made in any of the covenants herein contained, then it shall be lawful for the said Landlord to re-enter the said premises, and the same to have again, re-possess and enjoy. The said Tenant hereby expressly waives the service of any notice in writing of intention to re-enter.

14th. That this instrument shall not be a lien against said premises in respect to any mortgages that are now on or that hereafter may be placed against said premises, and that the recording of such mortgage or mortgages shall have preference and precedence and be superior and prior in lien of this lease, irrespective of the date of recording and the Tenant agrees to execute without cost, any such instrument which may be deemed necessary or desirable to further effect the subordination of this lease to any such mortgage or mortgages, and a refusal to execute such instrument shall entitle the Landlord, or the Landlord's assigns and legal representatives to the option of cancelling this lease without incurring any expense or damage and the term hereby granted is expressly limited accordingly. C.M.L.

15th. The Tenant has this day deposited with the Landlord the sum of \$ 3,600.00 as security for the full and faithful performance by the Tenant of all the terms, covenants and conditions of this lease upon the Tenant's part to be performed, which said sum shall be returned to the Tenant after the time fixed as the expiration of the term herein, provided the Tenant has fully and faithfully carried out all of said terms, covenants and conditions on Tenant's part to be performed. In the event of a bona fide sale, subject to this lease, the Landlord shall have the right to transfer the security to the vendee for the benefit of the Tenant and the Landlord shall be considered released by the Tenant from all liability for the return of such security; and the Tenant agrees to look to the new Landlord solely for the return of the said security, and it is agreed that this shall apply to every transfer or assignment made of the security to a new Landlord.

16th. That the security deposited under this lease shall not be mortgaged, assigned or encumbered by the Tenant without the written consent of the Landlord.

17th. It is expressly understood and agreed that in case the demised premises shall be deserted or vacated, or if default be made in the payment of the rent or any part thereof as herein specified, or if, without the consent of the Landlord, the Tenant shall sell, assign, or mortgage this lease or if default be made in the performance of any of the covenants and agreements in this lease contained on the part of the Tenant to be kept and performed, or if the Tenant shall fail to comply with any of the statutes, ordinances, rules, orders, regulations and requirements of the Federal, State and Local Governments or of any and all their Departments and Bureaus, applicable to said premises, or if the Tenant shall file or there be filed against Tenant a petition in bankruptcy or arrangement, or Tenant be adjudicated a bankrupt or make an assignment for the benefit of creditors or take advantage of any insolvency act, the Landlord may, if the Landlord so elects, at any time thereafter terminate this lease and the term hereof, on giving to the Tenant five days' notice in writing of the Landlord's intention so to do, and this lease and the term hereof shall expire and come to an end on the date fixed in such notice as if the said date were the date originally fixed in this lease for the expiration hereof. Such notice may be given by mail to the Tenant addressed to the demised premises.

18th. Tenant shall pay to Landlord the rent or charge, which may, during the demised term, be assessed or imposed for the water used or consumed in or on the said premises, whether determined by meter or otherwise, as soon as and when the same may be assessed or imposed, and will also pay the expenses for the setting of a water meter in the said premises should the latter be required. Tenant shall pay Tenant's proportionate part of the sewer rent or charge imposed upon the building. All such rents or charges or expenses shall be paid as additional rent and shall be added to the next month's rent thereafter to become due.

19th. That the Tenant will not nor will the Tenant permit undertenants or other persons to do anything in said premises, or bring anything into said premises, or permit anything to be brought into said premises or to be kept therein, which will in any way increase the rate of fire insurance on said demised premises, nor use the demised premises or any part thereof, nor suffer or permit their use for any business or purpose which would cause an increase in the rate of fire insurance on said building, and the Tenant agrees to pay on demand any such increase.

20th. The failure of the Landlord to insist upon a strict performance of any of the terms, conditions and covenants herein, shall not be deemed a waiver of any rights or remedies that the Landlord may have, and shall not be deemed a waiver of any subsequent breach or default in the terms, conditions and covenants herein contained. This instrument may not be changed, modified, discharged or terminated orally.

21st. If the whole or any part of the demised premises shall be acquired or condemned by Eminent Domain for any public or quasi public use or purpose, then and in that event, the term of this lease shall cease and terminate from the date of title vesting in such proceeding and Tenant shall have no claim against Landlord for the value of any unexpired term of said lease. No part of any award shall belong to the Tenant.

22nd. If after default in payment of rent or violation of any other provision of this lease, or upon the expiration of this lease, the Tenant moves out or is dispossessed and fails to remove any trade fixtures or other property prior to such said default, removal, expiration of lease, or prior to the issuance of the final order or execution of the warrant, then and in that event, the said fixtures and property shall be deemed abandoned by the said Tenant and shall become the property of the Landlord.

23rd. In the event that the relation of the Landlord and Tenant may cease or terminate by reason of the re-entry of the Landlord under the terms and covenants contained in this lease or by the ejectment of the Tenant by summary proceedings or otherwise, or after the abandonment of the premises by the Tenant, it is hereby agreed that the Tenant shall remain liable and shall pay in monthly payments the rent which accrues subsequent to the re-entry by the Landlord, and the Tenant expressly agrees to pay as damages for the breach of the covenants herein contained, the difference between the rent reserved and the rent collected and received, if any, by the Landlord during the remainder of the unexpired term, such difference or deficiency between the rent herein reserved and the rent collected if any, shall become due and payable in monthly payments during the remainder of the unexpired term, as the amounts of such difference or deficiency shall from time to time be ascertained; and it is mutually agreed between Landlord and Tenant that the respective parties hereto shall and hereby do waive trial by jury in any action, proceeding or counterclaim brought by either of the parties against the other on any matters whatsoever arising out of or in any way connected with this lease, the Tenant's use or occupancy of said premises, and/or any claim of injury or damage.

24th. The Tenant waives all rights to redeem under any law of the State of New York.

25th. This lease and the obligation of Tenant to pay rent hereunder and perform all of the other covenants and agreements hereunder on part of Tenant to be performed shall in nowise be affected, impaired or excused because Landlord is unable to supply or is delayed in supplying any service expressly or impliedly to be supplied or is unable to make, or is delayed in making any repairs, additions, alterations or decorations or is unable to supply or is delayed in supplying any equipment or fixtures if Landlord is prevented or delayed from so doing by reason of governmental preemption in connection with a National Emergency or in connection with any rule, order or regulation of any department or subdivision thereof of any governmental agency or by reason of the condition of supply and demand which have been or are affected by war or other emergency.

26th. No diminution or abatement of rent, or other compensation, shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the building or to its appliances, nor for any space taken to comply with any law, ordinance or order of a governmental authority. In respect to the various "services," if any, herein expressly or impliedly agreed to be furnished by the Landlord to the Tenant, it is agreed that there shall be no diminution or abatement of the rent, or any other compensation, for interruption or curtailment of such "service" when such interruption or curtailment shall be due to accident, alterations or repairs desirable or necessary to be made or to inability or difficulty in securing supplies or labor for the maintenance of such "service" or to some other cause, not gross negligence on the part of the Landlord. No such interruption or curtailment of any such "service" shall be deemed a constructive eviction. The Landlord shall not be required to furnish, and the Tenant shall not be entitled to receive, any of such "services" during any period wherein the Tenant shall be in default in respect to the payment of rent. Neither shall there be any abatement or diminution of rent because of making of repairs, improvements or decorations to the demised premises after the date above fixed for the commencement of the term, it being understood that rent shall, in any event, commence to run at such date so above fixed.

27th. Landlord shall not be liable for failure to give possession of the premises upon commencement date by reason of the fact that premises are not ready for occupancy or because a prior Tenant or any other person is wrongfully holding over or is in wrongful possession, or for any other reason. The rent shall not commence until possession is given or is available, but the term herein shall not be extended.

(SEE PARAGRAPHS "28" THROUGH "54" OF RIDER)

CML

And the said Landlord doth covenant that the said Tenant on paying the said yearly rent, and performing the covenants aforesaid, shall and may peacefully and quietly have, hold and enjoy the said demised premises for the term aforesaid, provided however, that this covenant shall be conditioned upon the retention of title to the premises by the Landlord.

And it is mutually understood and agreed that the covenants and agreements contained in the within lease shall be binding upon the parties hereto and upon their respective successors, heirs, executors and administrators.

In Witness Whereof, the parties have interchangeably set their hands and seals (or caused these presents to be signed and their names and corporate seal to be hereto affixed) this

rent to be paid and received, if any, by the Landlord during the remainder of the unexpired term, such difference or deficiency between the rent herein reserved and the rent collected if any, shall become due and payable in monthly payments during the remainder of the unexpired term, as the amounts of such difference or deficiency shall from time to time be ascertained; and it is mutually agreed between Landlord and Tenant that the respective parties hereto shall and hereby do waive trial by jury in any action, proceeding or counterclaim brought by either of the parties against the other on any matters whatsoever arising out of or in any way connected with this lease, the Tenant's use or occupancy of said premises, and/or any claim of injury or damage.

24th. The Tenant waives all rights to redeem under any law of the State of New York.

25th. This lease and the obligation of Tenant to pay rent hereunder and perform all of the other covenants and agreements hereunder on part of Tenant to be performed shall in nowise be affected, impaired or excused because Landlord is unable to supply or is delayed in supplying any service expressly or impliedly to be supplied or is unable to make, or is delayed in making any repairs, additions, alterations or decorations or is unable to supply or is delayed in supplying any equipment or fixtures if Landlord is prevented or delayed from so doing by reason of governmental preemption in connection with a National Emergency or in connection with any rule, order or regulation of any department or subdivision thereof of any governmental agency or by reason of the condition of supply and demand which have been or are affected by war or other emergency.

26th. No diminution or abatement of rent, or other compensation, shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the building or to its appliances, nor for any space taken to comply with any law, ordinance or order of a governmental authority. In respect to the various "services," if any, herein expressly or impliedly agreed to be furnished by the Landlord to the Tenant, it is agreed that there shall be no diminution or abatement of the rent, or any other compensation, for interruption or curtailment of such "service" when such interruption or curtailment shall be due to accident, alterations or repairs desirable or necessary to be made or to inability or difficulty in securing supplies or labor for the maintenance of such "service" or to some other cause, not gross negligence on the part of the Landlord. No such interruption or curtailment of any such "service" shall be deemed a constructive eviction. The Landlord shall not be required to furnish, and the Tenant shall not be entitled to receive, any of such "services" during any period wherein the Tenant shall be in default in respect to the payment of rent. Neither shall there be any abatement or diminution of rent because of making of repairs, improvements or decorations to the demised premises after the date above fixed for the commencement of the term, it being understood that rent shall, in any event, commence to run at such date so above fixed.

27th. Landlord shall not be liable for failure to give possession of the premises upon commencement date by reason of the fact that premises are not ready for occupancy or because a prior Tenant or any other person is wrongfully holding over or is in wrongful possession, or for any other reason. The rent shall not commence until possession is given or is available, but the term herein shall not be extended.

(SEE PARAGRAPHS "28" THROUGH "54" OF RIDER)

CML

And the said Landlord doth covenant that the said Tenant on paying the said yearly rent, and performing the covenants aforesaid, shall and may peacefully and quietly have, hold and enjoy the said demised premises for the term aforesaid, provided however, that this covenant shall be conditioned upon the retention of title to the premises by the Landlord.

And it is mutually understood and agreed that the covenants and agreements contained in the within lease shall be binding upon the parties hereto and upon their respective successors, heirs, executors and administrators.

In Witness Whereof, the parties have interchangeably set their hands and seals (or caused these presents to be signed by their proper corporate officers and caused their proper corporate seal to be hereto affixed) this
day of 19

Signed, sealed and delivered

in the presence of

Constantine Leonardo L. S.
CONSTANTINE LEONARDO, Landlord
M & A REALTY CORP. L. S.

BY: Mitch Nesheiwat L. S.
MITCH NESHEIWAT

ADDENDUM TO LEASE
BETWEEN
CONSTANTINE LEONARDO, Landlord
and
M & A REALTY CORP., Tenant

Notwithstanding anything to the contrary contained in the lease, between the parties of which this addendum is hereby made a part, the Landlord agrees with the Tenant as follows:

1. Tenant shall have the right to sublet the subject premises without the Landlord's consent, provided Tenant shall at all times remain primarily liable to Landlord for the full performance of the terms and conditions of this Lease.

2. The Landlord hereby forgives the payment of rent as called for by Paragraph "28" and "29" of this Lease for the first two (2) calendar months following the date that Tenant takes occupancy of the subject premises. *occupancy is deemed to begin September first*
The first rent payment is due September first 1993 CML

3. The parties agree that they shall execute, simultaneously with the execution of this Lease, a Memorandum of this Lease to be recorded in the office of the clerk of Orange County at Tenant's cost and expense.

Constantine M. Leonardo
CONSTANTINE LEONARDO, Landlord

M & A REALTY CORP., Tenant

By Mitch Nesheiwat
MITCH NESHEIWAT
General Manager

RIDER TO LEASE

LEONARDO TO M & A REALTY CORP.

28) ANNUAL RENT

Year 1	July 1, 1993-	June 30, 1994	\$ 21,600.00
Year 2	July 1, 1994-	June 30, 1995:	\$ 21,600.00
Year 3	July 1, 1995-	June 30, 1996:	\$ 21,600.00
Year 4	July 1, 1996-	June 30, 1997:	\$ 21,600.00
Year 5	July 1, 1997-	June 30, 1998:	\$ 21,600.00
Year 6	July 1, 1998-	June 30, 1999:	\$ 21,600.00
Year 7	July 1, 1999-	June 30, 2000:	\$ 21,600.00
Year 8	July 1, 2000-	June 30, 2001:	\$ 21,600.00
Year 9	July 1, 2001-	June 30, 2002:	\$ 21,600.00
Year 10	July 1, 2002-	June 30, 2003:	\$ 21,600.00
Option			
Year 11	July 1, 2003-	June 30, 2004:	\$ 24,000.00
Year 12	July 1, 2004-	June 30, 2005:	\$ 24,000.00
Year 13	July 1, 2005-	June 30, 2006:	\$ 24,000.00
Year 14	July 1, 2006-	June 30, 2007:	\$ 24,000.00
Year 15	July 1, 2007-	June 30, 2008:	\$ 24,000.00
Year 16	July 1, 2008-	June 30, 2009:	\$ 24,000.00
Year 17	July 1, 2009-	June 30, 2010:	\$ 24,000.00
Year 18	July 1, 2010-	June 30, 2011:	\$ 24,000.00
Year 19	July 1, 2011-	June 30, 2012:	\$ 24,000.00
Year 20	July 1, 2012-	June 30, 2013:	\$ 24,000.00

29) MONTHLY RENT

Monthly rent shall be payable as follows:

Year 1	July 1, 1993-	June 30, 1994	\$ 1,800.00
Year 2	July 1, 1994-	June 30, 1995:	\$ 1,800.00
Year 3	July 1, 1995-	June 30, 1996:	\$ 1,800.00
Year 4	July 1, 1996-	June 30, 1997:	\$ 1,800.00
Year 5	July 1, 1997-	June 30, 1998:	\$ 1,800.00
Year 6	July 1, 1998-	June 30, 1999:	\$ 1,800.00
Year 7	July 1, 1999-	June 30, 2000:	\$ 1,800.00
Year 8	July 1, 2000-	June 30, 2001:	\$ 1,800.00
Year 9	July 1, 2001-	June 30, 2002:	\$ 1,800.00
Year 10	July 1, 2002-	June 30, 2003:	\$ 1,800.00
Option			
Year 11	July 1, 2003-	June 30, 2004:	\$ 2,000.00
Year 12	July 1, 2004-	June 30, 2005:	\$ 2,000.00
Year 13	July 1, 2005-	June 30, 2006:	\$ 2,000.00
Year 14	July 1, 2006-	June 30, 2007:	\$ 2,000.00
Year 15	July 1, 2007-	June 30, 2008:	\$ 2,000.00
Year 16	July 1, 2008-	June 30, 2009:	\$ 2,000.00
Year 17	July 1, 2009-	June 30, 2010:	\$ 2,000.00
Year 18	July 1, 2010-	June 30, 2011:	\$ 2,000.00
Year 19	July 1, 2011-	June 30, 2012:	\$ 2,000.00
Year 20	July 1, 2012-	June 30, 2013:	\$ 2,000.00

CML

up

30) INSPECTION OF PREMISES

Tenant has inspected the premises and fixtures appurtenant thereto and agrees to take the same "as is", Landlord makes no representations with respect to the condition of the premises.

31) LIABILITY INSURANCE

During the term of this lease, the tenant shall provide and keep in force for the protection of both the landlord and the tenant as named insured a general liability policy in the form satisfactory to the landlord on the leased premises or any appurtenances thereto. Such policy or policies shall be written with the limits of not less than One Million (\$ 1,000,000.00) Dollars with respect to bodily injury and single limit coverage property damage. The tenant shall deliver a Certificate of Insurance which shall provide that such insurance may not be cancelled without notice to the landlord of at least ten (10) days. In the event of such cancellation the landlord may provide such insurance and charge the costs of the same as such additional rent unless the tenant shall replace such insurance prior to its effective cancellation.

32) HAZARD INSURANCE

Tenant shall be required to maintain fire insurance in the amount of \$100,000.00 on the leased premises, and this policy shall list the Landlord as an additional insured.

33) LANDLORD'S EXONERATION

The landlord shall not be liable for personal injury or damage to personal property occurring with the leased premises unless caused by or resulting from the willful conduct or negligence of the landlord or its agents, servants or employees in the operation or maintenance of the leased premises or in the building containing the leased premises.

34) DUTY TO KEEP MAINTAIN PREMISES

The tenant agrees to maintain the interior and exterior of the premises and buildings, to keep the buildings safe and in compliance with State and local laws and codes and to make any and all repairs to the premises, including structural repairs. Tenant shall also furnish all utilities and electricity to the premises at its own cost and expense.

CML
30

35) ALTERATIONS

The tenant agrees, at its own cost and expense to make any necessary alterations to the leased premises so that the same can be suitable for use as a gasoline service station. No alterations shall be made however, until the tenant shall have secured from the landlord written approval of all plans and secured from the landlord written approval of all plans and specifications covering such alterations, it being understood that such approval shall not be unreasonably withheld; and all such alterations and improvements shall be made in accordance with the rules, regulations ordinances and requirements of the various municipal, state and federal departments, agencies, boards and commissions having jurisdiction.

36) FURTHER RESPONSIBILITY OF TENANT

The tenant shall obtain any approvals or permits necessary for the operation of tenant's business. Tenant shall keep the premises clean and free from infestation from insects, rodents or other pests. Should such infestation occur, tenant shall hire and pay for a professional exterminator to remove such condition unless said condition is caused by the landlord.

37) UNDERGROUND STORAGE TANKS

Landlord agrees to cause the removal, at his sole cost and expense, any and all underground petroleum storage tanks as well as any contaminated liquids and soil existing at the premises.

During the course of the removal of the aforesaid underground storage tanks, landlord agrees to permit the tenant to install at tenant's sole cost and expense new storage tanks and related equipment. Any and all costs associated with the installation of said storage tanks, including the obtaining of permits and the payment of fees, shall be the responsibility of the tenant. The tenant shall thereafter be solely responsible for the maintenance of the said tanks and equipment and agrees to indemnify and hold harmless the landlord from any damages caused from leakage of the said tanks. The underground storage tanks, pipes and equipment shall be removed by the tenant, at its own cost and expense, upon the expiration of the term of this lease. The excavation shall be backfilled and the surface of the premises must be left in the same condition upon the expiration of the term of this lease.

In the event that during the course of the installation of the aforesaid underground storage tanks there is a delay not attributable to the landlord but caused by the tenant, tenant shall indemnify and hold landlord harmless for any damages due to Luzon Environmental Services resulting from that delay.

FW
CML

38) CHARGES MAY BECOME A LIEN ON THE PREMISES

If any charge required by the lease to be paid by the tenant shall not be paid by the tenant and thereby becomes a lien on the property of which the leased premises are a part, the landlord may pay the same and bill the tenant therefor as additional rent to be paid upon such billing.

39) SIGNS

Notwithstanding anything contained herein to the contrary, the tenant shall have the right to place any signage reasonable or customary for the permitted uses or necessary to comply with a particular oil company's image. Placement of any signage shall be subject to the landlord's consent which shall not be unreasonably withheld and all signage shall be subject to compliance with the existing laws and ordinances of the Town of New Windsor and State of New York.

40) HEAT AND AIR CONDITIONING

The tenant agrees to furnish whatever heat and air conditioning is necessary to the leased premises. It is agreed however that the landlord shall not be liable for failure of heat and/or air conditioning.

41) TAXES, SANITATION AND WATER AND SEWER CHARGES

The tenant agrees to pay to the landlord as additional rent, three-fourths of the cost of the Town, State, County and School taxes. Tenant shall pay for the cost of municipal sanitation, water and sewer charges imposed upon the real property and the building in which the leased premises are located.

Such additional rent shall be paid to landlord within thirty (30) days after demand therefor by the landlord.

42) BROKER

The parties agree that no broker brought about this lease.

43) OPTION TO RENEW

The tenant shall have the right to renew this lease upon the same terms and conditions, at the same annual rent, payable in the same equal monthly installments, for an additional term of Ten (10) years commencing on July 1, 2003 and terminating on June 30, 2013; provided however that the tenant has duly performed all of the covenants, terms and conditions herein set forth for the tenant to perform and provided further that the tenant shall give written notice to the landlord by certified mail, return receipt requested, at least six (6) months before the termination of this lease, of the tenant's election to so renew.

44) LATE CHARGE

A late charge of Four (4%) per cent of any payment more than ten (10) days late shall be incurred by the tenant under this lease. Such late charge shall be cumulative.

45) NOTICE OF DEFAULT

Landlord shall not commence any proceedings to dispossess the tenant for default unless the landlord shall have given Three (3) days written notice of such default and tenant shall have failed to cure such default within such three (3) day period.

46) ATTORNEY'S FEES

In any action or proceeding to enforce the terms of this lease or in connection with any effort to collect the rent or additional rent payable hereunder, the prevailing party shall be entitled to recover reasonable attorney's fees.

47) DUTY TO KEEP RIGHT OF WAY FREE FOR INGRESS AND EGRESS

Tenant has the obligation to keep the right-of-way located along the easterly line of the premises free for ingress and egress of other vehicles.

48) NOTICES

All notices to the parties shall be sent to the address set forth on page one of the lease unless another address is specified by such party.

49) FAILURE OF TENANT TO REMOVE PERSONAL PROPERTY

If at the end of the term the tenant fails to remove any personal property or trade fixtures owned by tenant the landlord may remove and dispose of same as the landlord sees fit and charge the reasonable cost of such removal and disposition to the tenant; or at the landlord's option, such items of personal property and trade fixtures shall become the property of the landlord.

50) ENTIRE AGREEMENT

This lease contains the entire agreement between the parties and any agreement hereafter made shall be ineffective to change, modify, discharge or effect an abandonment of it in whole or in part unless such agreement is in writing and signed by the party against whom enforcement of the change, modification, discharge or abandonment is sought.

*for
call*

51) NO WAIVER

The failure of landlord to seek redress for a violation of, or to insist upon strict performance of, any covenant or condition of this lease shall not prevent a subsequent act, which would have originally constituted a violation, from having all the force and effect of an original violation. The receipt of landlord of rent with knowledge of the breach of any covenant of this lease shall not be deemed a waiver of such breach, No provisions of this lease shall be deemed to have been waived by the landlord, unless such waiver be in writing signed by the landlord. No payment by tenant or receipt by landlord of a lesser amount than the monthly rent herein stipulated shall be deemed to be other than on account of the earliest stipulated rent, nor shall any endorsement or statement on any check or any letter accompanying said check or payment as rent be deemed an accord and satisfaction, and landlord may accept such check or payment without prejudice of landlord's right to recover the balance of such rent or pursue any other remedy in this lease.

52) CAPTIONS

The captions are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this lease or the meaning of any provisions thereof.

53) CONFLICT

In the event that any conflict under this lease between the provisions of this Rider or the printed portion of this lease, the provisions of this Rider shall prevail.

54) TIME FOR ACCEPTANCE

This lease agreement shall not constitute an offer to lease or be binding on the landlord unless it is executed by tenant and returned to the landlord or his attorney Richard Clarino, Esq., 386 Broadway, Newburgh, New York 12550, together with the security deposit set forth in paragraph numbered "15" of the lease, on or before May 14, 1993.


CONSTANTINE LEONARDO, Landlord

M & A REALTY CORP., Tenant

By: 
MITCH NESHEIWAT, General Manager

State of New York,

County of

} ss.:

On the

day of

19 , before me personally came

to me known and known to me to be the individual described in, and who executed, the foregoing instrument, and
acknowledged to me that he executed the same.

State of New York,

County of

} ss.:

On the

day of

19 , before me personally came

to me known, who, being by me duly sworn, did depose and say that he resides at No.

that he is the

of

the corporation mentioned in, and which executed, the foregoing instrument; that he knows the seal of said corpora-
tion; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of
of said corporation; and that he signed his name thereto by like order.

RECEIVED JUL 19 1993

Lease

Dated, 19

In Consideration of the letting of the premises within mentioned to the within named Tenant and the sum of
\$1.00 paid to the undersigned by the within named Landlord, the undersigned do hereby covenant and agree, to and
with the Landlord and the Landlord's legal representatives, that if default shall at any time be made by the said Tenant
in the payment of the rent and the performance of the covenants contained in the within lease, on the Tenant's part to
be paid and performed, that the undersigned will well and truly pay the said rent, or any arrears thereof, that may re-

acknowledged to me that he executed the same.

State of New York,
County of

ss.:

On the day of 19, before me personally came

to me known, who, being by me duly sworn, did depose and say that he resides at No.

that he is the of

the corporation mentioned in, and which executed, the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of of said corporation; and that he signed h name thereto by like order.

RECEIVED JUL 1 9 1893

LEASE

Dated, 19

In Consideration of the letting of the premises within mentioned to the within named Tenant and the sum of \$1.00 paid to the undersigned by the within named Landlord, the undersigned do hereby covenant and agree, to and with the Landlord and the Landlord's legal representatives, that if default shall at any time be made by the said Tenant in the payment of the rent and the performance of the covenants contained in the within lease, on the Tenant's part to be paid and performed, that the undersigned will well and truly pay the said rent, or any arrears thereof, that may remain due unto the said Landlord, and also pay all damages that may arise in consequence of the non-performance of said covenants, or either of them, without requiring notice of any such default from the said Landlord. The undersigned hereby waives all right to trial by jury in any action or proceeding hereinafter instituted by the Landlord, to which the undersigned may be a party.

In Witness Whereof, the undersigned ha set hand and seal this day of
, 19
WITNESS

L. S.

SCHEDULE C

ROUTE # 31

2nd Floor
Dive Apartment
Shop (Vacant)

Garage

Processing Plant

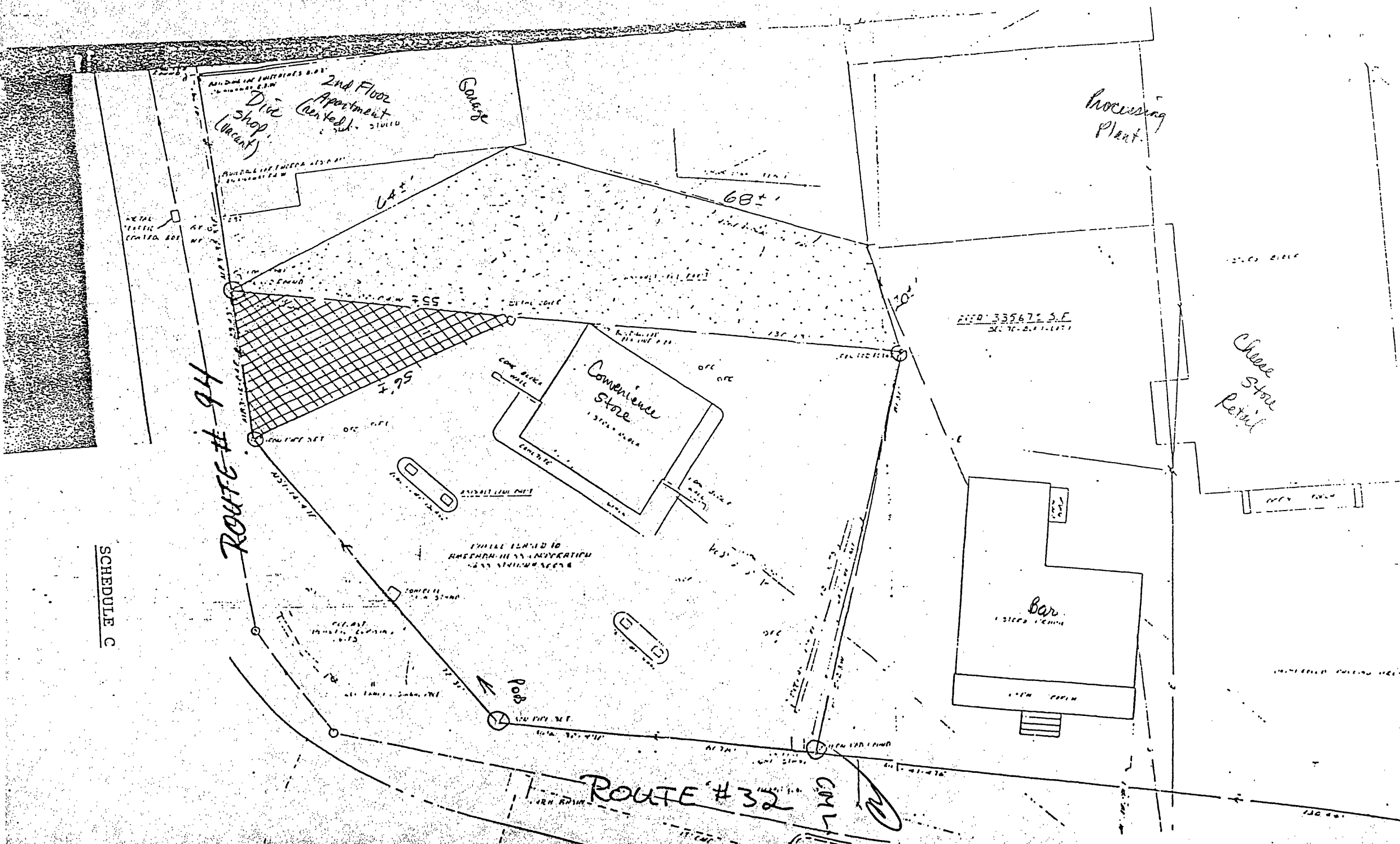
Cheese Store
Retail

AREA 33567 S.F.
S.E. 70-2.4-1071

Convenience
Store

Bar

ROUTE # 32



SCHEDULE A

BEGINNING at a point formed by the intersection of the southerly side of New York State Route #94 and easterly side of New York State Route #32 and running thence:


1. N 51° 14' 47" E, along the southerly side of N. Y. State Route #94, a distance of 72.31' to an iron pipe and running thence,


2. N 83° 16' 04" E, and still along the southerly side of N. Y. State Route #94, a distance of 29.43' to an iron rod and running thence,

3. S 06° 02' 04" W, a distance of 130.13' to an iron rod and running thence,

4. N 76° 15' 23" W, a distance of 81.31' to an iron rod on the easterly side of N. Y. State Route #32 and running thence,

5. N 06° 32' 49" E, along the easterly side of N. Y. State Route #32, a distance of 61.78' to the point or place of BEGINNING.

SUBJECT to the reservation of a right of ingress and egress in favor of the Lessor over a portion of the above described premises as more particularly described by cross hatching thus  on the attached Exhibit "C", for the benefit of patrons or customers of the business owned by the Lessor on Route #94 directly east of the above described premises for entrance to and exit from the parking areas of said adjoining business provided, however, that such reservation shall not include the right to park vehicles on the portion so described.

TOGETHER with a right to enter and cross over other lands of the Lessor adjacent to the premises as more particularly described by dots thus  on the attached Exhibit "C" for the purpose of ingress and egress, for deliveries to the leased premises only.

EXCEPTING HOWEVER from this last described area which the lessee has the right to enter and cross over for deliveries that portion thereof lying southerly of a line which runs from a point 6 feet northerly in extension of the west face of the building addition to the Pizza Factory of Samuel G. Leonardo to a point marking the southeasterly corner of the leased premises.


CML

LEONARDO, SAMUEL

MR. NUGENT: Request for 50.4 ft. front yard variance and 14.8 ft. maximum canopy height for Coastal Gas Station located at Five Corners in a C zone. Referred by the Planning Board.

Mr. Eugene Ninnie appeared before the board representing the applicant on this proposal.

MR. LUCIA: Just mention for the board members before they get stated, there are two Leonardo applications. This first one only refers to the impacts of a canopy being put up at the site. It's supposed to be a Coastal Gas Station, this is part of the Leonardo property. Apparently there was an illegal subdivision and when you get to the next one, you'll find a number of other area variance applications on this same site as well as the site next door so they've split it up, I guess for their own purposes into Coastal's part of the variance application on this one site. And the next one you'll see additional area variances on the same site as well as on the adjacent site with that Club 32 Bar and the Leonardo Cheese place behind it.

MR. NUGENT: They are straightening the whole piece of property out.

MR. LUCIA: They are attempting to. There is a lot to it. The reason I mention it, it's unusual to get two separate applications that involve variances on the same piece of property but you can see this piece of property and the next.

MR. TANNER: How do we do this when they both impact each other?

MR. LUCIA: You have to ask them to go, it's tough in terms of making a decision because you're dealing with cumulative impacts so--

MR. SAMUEL LEONARDO: We had a meeting with the building inspector, the Supervisor and the Town Attorney and they had advised us to separate the two properties and we went through the expense of doing

that so you'll have to judge them as two separate properties, not one.

MR. LUCIA: I understand that. What I want the board to understand is they are going to see this gas station property on two separate applications, this one and the next one, that is unusual for the board. So I want them to know they are going to see this property with more variances again on the next application.

MR. SAMUEL LEONARDO: Fine.

MR. NUGENT: You can start.

MR. NINNIE: My name is Eugene Ninnie, I represent my client, Mr. Leonardo. We're here tonight to get a host of variances, one of which is the lot area, the setback, front yard setback, building height and lot width.

MR. BABCOCK: This is the site plan, okay, this one here looking for a front yard setback and maximum building height.

MR. NINNIE: As per your Notice of Disapproval.

MR. LUCIA: This is front yard on a canopy request, variance request of 50.4 feet and maximum building height and the canopy variance request of 14.8 feet.

MR. NUGENT: We're going to address that one first.

MR. NINNIE: Yes. The canopy presently is the one that is installed there now at the site is 14.8 feet high which is higher than the four inches per foot that is required by the Town Zoning.

MR. LUCIA: Mr. Ninnie, if I could, at least the way I read this, the canopy is actually 18 feet high and I believe you're only permitted a height of 3.2 feet and that generates a variance request of 14.8 feet?

MR. NINNIE: That is correct, yes.

MR. LUCIA: On the front yard, it appears that 60 feet

October 25, 1993

15

front yard is required, you're proposing only 9.6 feet and that is what generates a variance request of 50.4 feet.

MR. NINNIE: Yes.

MR. LUCIA: If you would, why don't you lay out for the board the history on this and why it is you need a canopy that is--

MR. NINNIE: The history of the project is started where Coastal Petroleum had come in and is leasing the site from Mr. Leonardo to operate a mixed use facility which is a retail gas line filling station. We went to the Planning Board and they had given us a recommendation to come here because of the incorrect lot size presently that is there and for setback. In order to meet certain dead lines, certain parts of the site is being constructed along with the canopy under a building permit that was issued and under that building permit was the canopy, so when the canopy went up, the issue of variance came to light at the Planning Board meeting after the building permit was issued.

MR. LUCIA: Was that building permit for the canopy or tanks?

MR. BABCOCK: It was for the tanks and canopy.

MR. NINNIE: So the Planning Board found this out after the fact and we're here to correct the problem.

MR. LUCIA: Just in looking over your application for the board's benefit, the retail store use is permitted by right in the C zone, that is not a problem. The gas line filling station and I guess service repair garages, if that is anticipated are permitted by special permit so assuming they get a variance, they still have to go back for a special permit. Are you going to need sign variances on this?

MR. NINNIE: I don't believe so. We've changed the present location of the sign, we're going to eliminate its location as shown on the plan here and we're utilizing the old concrete footing base that is

October 25, 1993

16

presently there from the old ATI station and the present sign is at the height permitted by zone.

MR. LUCIA: Have it set back from the road.

MR. BABCOCK: This says remove existing sign.

MR. NINNIE: This has to change, we're not going to put a new sign here. We're going to put the new sign back on the old foundation. It's there now.

MR. LUCIA: I raise it for your own protection, you might want to check both the sign height, site setback and sign area requirements. It doesn't, you might as well take care of it in one shot. I'm not sure what the sign area permitted is but you need to consider the freestanding sign or signs or whatever signs you have on the building so review your numbers.

MR. TANNER: What about parking?

MR. LUCIA: That is another thing, when we get to the next one, there's a note on the map that parking is going to be determined by the Planning Board. Again, I think that is something you might want to do your homework on to determine whether or not you have sufficient parking for the mixed uses you have on both of these sites because if you don't have it, you're going to have to be back here for parking variance, number of parking space variances.

MR. TANNER: Just on this section you have gas station and two story frame building.

MR. NINNIE: Based on the first review at the, well, we have been to two workshops so far, the engineer, Mark Edsall, had looked at the parking and at that time, he thought that the number of parking spaces was sufficient for what is required for both the existing building, the dive shop and the gasoline filling retail.

MR. LUCIA: I certainly defer to mark's opinion on it but my suggestion is doublecheck those numbers because what we're seeing here looks like an awful lot of

October 25, 1993

17

things on these relatively small sites and if there's space for parking great but if there isn't, determine it before you come back.

MR. NUGENT: According to the drawing, they have 15 and they only need 9.

MR. TORLEY: I can't see 15 spaces.

MR. NINNIE: It's hard to see because what we've shown is the asphalt that is going to be put down.

MR. BABCOCK: What Dan is saying he's recommending to the applicant to take a close look so if they need a parking variance, they would apply for it while they are here, if they don't get a parking variance and they go back to the Planning Board and do not have the parking they have to go back to the Zoning Board. That is why he wants to make sure.

MR. LUCIA: Try and do it in one big bite so check all your numbers.

MR. NINNIE: They were checked, that is what's puzzling me, the numbers were checked by Mark Edsall. He agrees with me and I can get it in writing if you'd like.

MR. LUCIA: I'll defer to his expertise but it's one of those things save yourself another trip back by doublechecking.

MR. NUGENT: Dan, this drawing that we're looking at is only taking into consideration that gas station?

MR. LUCIA: That is correct, the next drawing you see on the next application will be both pieces of property and with a lot more variances.

MR. TANNER: But the parking would have to be for the whole site?

MR. NUGENT: The parking on this building is correct, matter of fact, it's over correct, they only need 9, they've got 15.

MR. LUCIA: I think what they mean there is the dive shop is the exact same size it was previously. They are proposing a very slight increase in area on the gas station after its remodeled so what they are attempting to convey is that they provide, the provided size is somewhat larger than the existing size, it's a slight addition.

MR. TORLEY: I see there's also building coverage looks like you're over on that too, required 14.5 which I assume is maximum coverage.

MR. BABCOCK: That would be an existing situation there.

MR. TORLEY: No, it's--

MR. BABCOCK: He's not changing anything as far as building coverage.

MR. LUCIA: Wouldn't expansion of the gas station increase it?

MR. BABCOCK: Expansion is interior, there's no addition, just, it's a relocation of retail space within the gas station.

MR. LUCIA: Footprint is not increase of the gas station, right?

MR. NINNIE: We're putting this extension in the back as a cooler but the cooler is attached to the building but it's a 5 foot extension we've shown it as 8 but the manufacturer has come back and said all we need is 5.

MR. LUCIA: If it increases the footprint on the grounds, it probably does effect developmental coverage, that might be a line item you need to add if it is over as it appears to be on this table.

MR. BABCOCK: What about the canopy?

MR. LUCIA: Certainly, yes.

MR. NINNIE: That is counted as a footprint.

MR. LUCIA: It's certainly not open to the sky, that really does increase your percentage coverage that is a good size canopy.

MR. TORLEY: Why is it that big?

MR. NINNIE: That is just the way it's manufactured for that particular set of pumps that are there.

MR. TORLEY: You had no option on the size?

MR. NINNIE: For fire protection, there's a haylon (phonetic) system that goes inside of it.

MR. SAMUEL LEONARDO: It has to be so big for the fire protection applicant we put a small, the island is there now smaller than the one used to be before.

MR. LUCIA: But there was no overhead canopy over the previous one.

MR. SAMUEL LEONARDO: No but I didn't think you can operate a gas station without the canopy because of the fire laws.

MR. LUCIA: You certainly need the fire protection, I'm not sure you need a canopy of this size. There was comment by Bobby Rogers before the Planning Board that the canopy that is there is not necessarily mandated by fire regulations. That is his field, not mine but I just recall that from the Planning Boare minutes you certainly need the haylon but whether you need a canopy of exactly this size is the open question.

MR. NINNIE: Even if it was of size you're still going to have to go back for a variance because the inclusion of the canopy square footage alone with the building footprint.

MR. TORLEY: I'm concerned about the space between the canopy and the road.

MR. LUCIA: I think what the board members are saying is reduce the size of the canopy you are making your

variance request smaller in terms of numbers and the board is bound to minimize your variance so if it is possible to get the same fire protection with a smaller canopy, that might be an issue the board would ask you about.

MR. BABCOCK: The other half of the canopy situation is that so that a car can park under there, get out of the rain, I don't know whether this will be but most of them are self-serving, applicant has to be 9 feet passed the island so somebody gets out of the car so it won't rain on them.

MR. LUCIA: Can we have your name?

MR. NASHWITH: Mitch Nashwith. This is the smaller size, the smallest size width wise 24 feet wide we can't get it any smaller than that.

MR. SAMUEL LEONARDO: It's manufactured in Albany and brought up here and erected here.

MR. NINNIE: It's a company standard size.

MR. BABCOCK: I'm sure there's other stations with smaller canopies if there was a different arrangement.

MR. LUCIA: The board as you may have indicated when I was speaking with the previous applicants we have to balance the benefit to you of the variances you're seeking against the detriment to the health, safety and welfare. So even though that may be a standard canopy size, if we can get a lesser impact on health, safety and welfare regulations by reducing it, that might be something the board would consider. I'm sure it can be cut down but that is something the board obviously will deal with when we get there. Couple other things I want to ask you, I notice a number of the items on your data table are labeled as pre-existing, non-conforming and the board would be interested in knowing how it is those items are pre-existing non-conforming.

MR. LUCIA: I guess specifically we're talking lot area, lot width, front yard, side yard, rear yard, I don't see a total side yard or we don't have a total

side yard, this is two front yards, is it not? Or do you want to get to those on the next application?

MR. NINNIE: What's your question?

MR. LUCIA: If you look at your first 1, 2, 3, 4 items on your data table, it's listed as pre-existing non-conforming from a zoning standpoint that would mean that they would have been in that prior location prior to January 1, 1966.

MR. NINNIE: That is correct.

MR. LUCIA: I think we would need some evidence on that if that is the case, whether it's from Mr. Leonardo or whoever can give us some indication that it has been in that location that long.

MR. NINNIE: What, the property or--

MR. LUCIA: The buildings with this footprint creating those non-conformities but we'll deal with that on the next application that is when we're going to get into that.

MR. BABCOCK: On this particular one, Dan, the lot area is clearly not because they are creating the lot today, you know what I am saying? The lot area, by putting this line through the subdivision which will be the next application, you're clearly creating this lot today so the lot area would be pre-existing so if there's a difference in what you have is there a difference?

MR. LUCIA: Yes, they are, that 14,000 whatever it is, I think the lot was just about divided in half, was it not, so the total lot size really is about 29,000, I guess.

MR. NINNIE: If you take into consideration this entire piece, it's not the 14,000, 14,000 is just what you see here for the gasoline.

MR. LUCIA: I know we're anticipating the next application but for clarity, we need to get some of

these items on record, this was apparently an illegal subdivision that we've done by deed in 1982 by an agreement between Leonardo's, they cut the property in half and they do have two separate tax bills on it, apparently the subdivision by deed which never went through any Planning Board anywhere and issued two separate tax lots. But that doesn't make a legal subdivision so they are now backtracking and doing what they should have done then so the lot area is not pre-existing non-conforming because they are recreating it now in effect an many of the variances you're going to see on the next application also are not pre-existing non-conforming because they are created by this new lot line separating lots 1 and 2 so we're certainly going to have to deal with those issues. I only raise it because it's shown on this map and I didn't want this first one to go by with the impression that it really is pre-existing non-conforming, some of it may be but all of it certainly isn't.

MR. TORLEY: When were you made aware that this was not going to be meeting the zoning code requirements?

MR. NINNIE: When?

MR. TORLEY: When, during this time, line of construction and everything else?

MR. NINNIE: I don't understand.

MR. TORLEY: Did you have everything up and you found out you're not meeting requirements?

MR. NINNIE: No, we were issued a building permit to do the improvements which included the canopy and to open as a gasoline retail and that is when the issue was brought up and then we came to the Planning Board and to go through to get this changed for the use because the use that was being proposed was retail gasoline filling which means you're going to sell cigarettes and soda, along with gasoline that is when it was found when we went to the first workshop.

MR. TORLEY: Before the construction was everything up when you went?

MR. NINNIE: Yes, everything was up when we went to the first workshop because the building permit was issued to us.

MR. BABCOCK: The canopy wasn't up at that time.

MR. LUCIA: First mention I see in the Planning Board minutes would have been July 21 of '93 and I guess in speaking with another representative of your office at that point, they did raise the point it was not a legal subdivision. And they needed variances.

MR. BABCOCK: When I issued a building permit for the replacement of the tanks, the canopy, and the remodel of the gas station, it's been a gas station for ever and there was no problem in doing that, when I issued the permit for the canopy, I did not think about zoning. It was a situation, it's a gas station, they were putting up a canopy, they called me up and told me that they wanted to put a small section of retail in this building. That is when I told them that they had to go to the Planning Board because it changes the parking regulations. So when they went to the Planning Board workshop session, which I wasn't at it at that time, Mark Edsall looked at it and realized that the canopy was close to the road. That is when he called me in. I was in another meeting and I talked to Mr. Ninnie in reference to that. And at that time, the canopy was not installed and I told Mr. Ninnie that he should not, he should tell his applicant, he's the engineer for the application, that the canopy should not be installed until he obtains the variances and then he can go ahead and put it up. And how I understand it was is that Coastal had already contracted with the people to install the canopy and they showed up and installed it.

MR. NINNIE: Cause there's like a 6 to 8 month waiting period for the next time they come back because they have one crew that goes over the country and does canopies.

MR. BABCOCK: Then we went to the Planning Board meeting, back to the Planning Board meeting and at the

meeting it was more or less agreed that stop work order would be put on the project until such time as they received the Zoning Board and Planning Board approvals. Then after that meeting, we had another meeting which it was during the day with everybody here that was present and it was decided that the stop work order that we wanted to do as far as the canopy would not effect anything, the canopy was already up, as far as the rest of the construction on the building they had a right to go ahead and do that if they wanted to block out the parking lot, they could do that. So it was decided at that moment that the stop work order really was not affecting anything, the canopy was already there to effect the rest of the work as far as getting rid of the contaminated material and finishing the tank removal, it didn't make any sense to continue to keep the stop work order so we lifted it and let them continue their work. And this is where we are tonight. The work that they've done since the day that the canopy went up till today, they were blacktopping, they have a right to do that, so really what's in question in this application in my mind is the front yard setback of the canopy, the height of the canopy. I think we should add the sign once we figure out what size is and how far off the property it is.

MR. NINNIE: Check some of the other numbers for the building footprint.

MR. BABCOCK: Developmental coverage and also lot area for this lot.

MR. NUGENT: Basically what we're doing is putting a blessing on it because it's already done.

MR. LUCIA: No, that is not correct. There's an agreement or proposed agreement I'm not sure the Town never signed it. Do we know that?

MR. BABCOCK: You have the same copies I have.

MR. LUCIA: I have an unsigned agreement proposed by Coastal's attorney or Mr. Leonardo's attorney, that said Coastal was proceeding with this work at their own risk and if it should turn out that they don't get the

necessary approvals, either from the Planning Board and/or from the Zoning Board, it's going down so the applicant certainly is aware if they went ahead certainly at the, clearly at their own risk and substantial expensive stuff is not approved, I'm not sure that agreement has ever been signed but its certainly been spoken about a number of times at Planning Board and Town Board meetings.

MR. NINNIE: You have to understand for the, you mentioned what was it public health or welfare?

MR. LUCIA: Public health, safety and welfare.

MR. NINNIE: The old site was far more detrimental than it is now or what we propose to do so we're improving the site.

MR. LUCIA: There was a tank leakage problem.

MR. NINNIE: Yes, they've removed the tanks as per DEC requirements, everything has been done to the T, we're actually improving the site.

MR. TORLEY: Do they have to go back to the Planning Board after this?

MR. BABCOCK: Yes, they do.

MR. TANNER: Planning Board will probably require a bond then on the site to see that the work is completed.

MR. BABCOCK: Yes, well, it won't be a bond, what it will be, it will be a cost estimate. They'll have to give us a cost estimate on anything that is not completed at the time of the Planning Board stamp. Once they are ready for a C.O. on this building, anything they don't do, maybe striping, blacktopping, so any site improvements that they wouldn't complete, they'd have to bond before they get a C.O.

MR. TORLEY: One thing before we finish this process, I do need to know what the requirements are for the canopy size for fire and safety we need to know what

size is actually required.

MR. LUCIA: I don't know that he has ever appeared, in the Planning Board records, they say there was a comment attributed to Bobby Rogers that it did not need to be that big.

MR. TORLEY: I'd like to know how big it has to be.

MR. TANNER: I'd imagine it's a state or national code with a minimum size.

MR. LUCIA: I'm not even sure that a canopy per se is required, you have to have the fire suppression but you can do it in other formats than a canopy. There are new service stations that have overheads with haylon nozzels that shoot down from light fixtures or any other decorative things above the pumps.

MR. NINNIE: Canopy looks better, I mean with the pipe work that is used for the haylon system is ugly, you want to cover it up with some kind of canopy, put some lights to dress it up.

MR. BABCOCK: It's a two-fold system, I don't--

MR. NINNIE: You have to accommodate lenghts of cars that are parking underneath for the pumps.

MR. BABCOCK: I don't think we've had a new gas station in the last three or four years that didn't put a canopy up with their system in it.

MR. TORLEY: Did they put them up 9 feet from the road?

MR. BABCOCK: Well, you'll see them.

MR. SAMUEL LEONARDO: I'm one of the owners, you see the State came by there about a year and a half ago and took, condemned some of the property so I think it's about three or four feet that they condemned so you have to take that into consideration. We had no say in the matter naturally and another thing, we had a court order to remove those tanks and we had to remove them we had a court order and we did that, it was supposed

to be \$8,500 and my poor brother ended up spending \$20,000, cost \$20,000 to take that tank out and the contaminated water and soil and we're not done with the soil yet. So he's 80 years old and he's not too well and that is the only means of support he has and we have been residents and taxpayers for that property has been in our family 70 years, you know, and you guys talk about variances and parking. You know there's something that bothers me and it's bothered me for a long time. There's a, behind us there's a lot right in Monro's building and next to Monro there's American Seafood, used to be the ambulance place now that place was a public place for years and years. All of a sudden, American Seafood comes in, he has no parking at all because on the east side, he only owns six inches, on the west side, he only owns three feet. They were parking on my property and I had to move them out. And I want to know please in a nice, fair way because you look like nice, fair gentlemen, in a nice, fair way and equitable way, explain to me how that happened. First of all, that never was a commercial place. You talk about grandfather clauses, that never was. How did that man get a permit to put that in there, number one, and you're talking about safety and health. Let me tell you another thing. The Town is going to be subject to some liability some day there is going to be some accident there and you do, you know why, I'll tell you why, there's no room for parking. When a man gets a delivery, it's a delivery with a ten foot truck and a big, big straight job 10 or 12 foot wide when he parks, he sticks halfway out on the left lane and right at that point, that road 94 when you're going west is two lanes, one lane is for left turn and one lane's for straight and where does it begin, right along at that building. Some day, that truck is going to be parked there and it's a good thing he comes 8 or 9 o'clock in the morning because even at 8 or 9 o'clock in the morning, I had to wait to get through. I was wondering how that ever occurred? Was it because the man that owned it was once on the Planning Board and his brother was a supervisor? Now we're not looking for anything more or we're not looking for anything less. I told you you're fair and equitable gentlemen and if that man has the right to operate that American Seafood, we have a right to open that gasoline station so this man can

October 25, 1993

28

live.

MR. LUCIA: Mr. Leonardo, I have no idea why.

MR. SAMUEL LEONARDO: As a tax payer and private citizen, I demand an answer.

MR. LUCIA: I would suggest you take your complaint to the Town Board. This board never considered American Seafood that piece of property.

MR. SAMUEL LEONARDO: I want to know how he existed without having letters sent out to everybody that is within the 300 foot area like everybody else has to do.

MR. LUCIA: I have no idea.

MR. SAMUEL LEONARDO: I want to know why.

MR. LUCIA: They never come before this board.

MR. SAMUEL LEONARDO: I beg you then to give this man the same consideration that they gave American Seafood. I'm not looking for any more or any less.

MR. LUCIA: Do you understand American Seafood never came before this board. This board has never seen that application.

MR. SAMUEL LEONARDO: That is besides the point.

MR. LUCIA: No it is not besides the point.

MR. SAMUEL LEONARDO: Yes, it is because how does he exist then?

MR. LUCIA: You have to complain to the Town Board maybe you're right, I'm not saying you're wrong.

MR. SAMUEL LEONARDO: Then you go down the street and you go down to Mr. Mann's, he keeps a junk yard there, that is a junk yard. He likes Fiat cars, I notice he's got about 16 Fiat cars all burned up, all disassembled, must be selling for parts. We're honest people, we have been here, we work hard. When I started, I worked

double shift, you know, we don't begrudge anybody anything. When Monro came, I came and says let Monro come, we all have to. I didn't put any objection it's live and let live. But I don't think we're being treated fairly and I'm looking for equitable treatment.

MR. LUCIA: I can assure you this board will treat you fairly and equitably. If American Seafood never came here, we can't comment, we have no idea what they did.

MR. SAMUEL LEONARDO: Still the injustice was done, I don't know how.

MR. NUGENT: Nothing to do with us, we only go by what's on this pad in front of us.

MR. TORLEY: Mike, am I correct in assuming that a person who feels there is a building violation can complain to you?

MR. BABCOCK: That is right, from 8:30 to 4:30.

MR. SAMUEL LEONARDO: I don't like to complain, I like to live and let live.

MR. LUCIA: You may have a very legitimate complaint.

MR. TORLEY: You pointed out your legitimate fears of a hazard of public safety, if you feel there's a danger, complain to--

MR. BABCOCK: --the building inspector.

MR. SAMUEL LEONARDO: I'll make a formal complaint right now, put it in the record, put it in the record, thank you.

MR. LUCIA: That is this application. You want to move on to the next one or do you want to hear more on this one?

MR. NUGENT: We have to do them both at the same time because they are all in the same piece of property.

MR. HOGAN: Currently, they are the same piece of

property legally.

MR. LUCIA: That is correct.

MR. HOGAN: Let's have the next one.

MR. BABCOCK: Should we make sure that the applicant knows what we need so we can proceed? We're going to need a new denial, you're going to have to do the lot area of this site plan versus what's required and what the difference is. You're going to have to tell us what your signage is and how high and how far off the property line it is and you're going to have to give us a developmental coverage and what the difference in that is.

MR. LUCIA: Again, just for your own protection, I'd suggest you check your numbers.

MR. BABCOCK: And the rest of the non-conforming pre-existing, I guess what the board is going to need to see is something that either a property record card from the assessor's office maybe again to indicate when these buildings were built, you know, this building was built in 1950.

MR. NINNIE: The assessor's office will have that.

MR. BABCOCK: Yes.

MS. BARNHART: Not if you can go back to '50.

MR. BABCOCK: If it is before '66 it will say. Basically, you're saying they are pre-existing. We want some information what made you say they are pre-existing. You can come back and show us evidence that the building was built in whatever.

MR. NINNIE: Back to the comment on lot area, none of these really change because if you are looking at this one piece these are the numbers, I have to remove the asterisk.

MR. BABCOCK: And put in what the variance request is, you need a third column.

MR. LUCIA: Just so we close out this one first Pat will give you an application form and set of instructions. This is commercial property so fill it out, return that to here with two checks, both payable to the Town of New Windsor for \$150 application fee and \$482 deposit against Town consultant review fees and various disbursements the board has in handling your application. I'll give you a copy of Section 267B of the Town Law and I just put an arrow in the margin next to the applicable variance standards. There are 5 standards listed there. All of which will enable this board to pass on your application. As I said we have to engage in a balancing test benefit to you if the variance is granted as weighed against the detriment to the health, safety and welfare of the neighborhood or community by giving you that variance from the Zoning Ordinance.

MR. NINNIE: Something in writing.

MR. LUCIA: It's included in the application when you come back to the public hearing, you have to speak to it orally on the record. We'd like to see photographs of the site, please, I guess everything on the site.

MR. NUGENT: Do you want a motion on that one?

MR. LUCIA: It's up to you if you want to table it until we hear the next one.

MR. NUGENT: I'm reading on through the next line item and now we're taking, if I read it correctly, we're taking in the other lot. Are we doing both lots?

MR. LUCIA: That is correct. So application number one is technically only the gas station and variance requirements on the corner lot. Application number 2 is all the other variance requirements except for the new gas station construction on both lots. Maybe you want to treat that as three separate applications, I don't know but that is up to you.

MR. BABCOCK: Basically, Jimmy, we couldn't look at the site plan for the gas station and the dive shop because

it was on the same lot. So when we started out here, we started out looking at a site plan for the gas station here except it was all one lot. When Mr. Ninnie came in and provided us with the deeds and so on, that is when we realized the deeds were made out but it was never legally done through the Planning Board. So we suggested since the deeds were done, it was already registered in Goshen tax map department, gets two tax map bills, the only thing that didn't happen is Planning Board approval. So we said let's put in this line in as a Planning Board approval then we can look at this as a site plan, how can you look at part of a lot as a site plan so that is why we're really doing it and it's just clarifying everything, just cleaning it up which variances goes with what lots that is a good question.

MR. NUGENT: But the second preliminary is actually taking in both lots?

MR. BABCOCK: Yes.

MR. NUGENT: Not just the second lot?

MR. BABCOCK: Correct.

MR. TORLEY: Both lots together are substandard size?

MR. BABCOCK: Yes.

MR. LUCIA: For reasons unrelated to the new gas station construction, merely based on existing buildings that are there.

MR. NUGENT: None of that information is on this drawing or is it?

MR. LUCIA: It is in part but there is a new drawing for the next one that more clearly lays out the two lots. This one has so much on it, it's tough to read the next one is a little clearer.

MR. TORLEY: For purposes as our attorney, are you informing us that it is more proper legally to accept separate it out as we're doing it?

MR. LUCIA: I would say two or three applications really are appropriate certainly two, one for each lot, you know the way they have broken it up is part of one lot one and both lots on the second. Now, they did that I assume because Coastal has the new gas station requirements and the Leonardo's have the old subdivision requirements. So I guess the question is do you want to break the Leonardo application into two further applications, one on each lot? That is up to you, makes no difference to me.

MR. BABCOCK: I think what we did--

MR. LUCIA: Why don't we table the first Leonardo application.

MR. NUGENT: Motion to table the first.

MR. TANNER: So moved.

MR. TORLEY: Second it.

ROLL CALL

MR. HOGAN	AYE
MR. LANGANKE	AYE
MR. TORLEY	AYE
MR. TANNER	AYE
MR. NUGENT	AYE

Permit No: 6356

File Date: 5/19/93

BUILDING PERMIT

SEC-BLK-LOT: 70-1-1.1

Permit Fee: \$\$\$500.00

A permit is hereby given by the Building Department of the Town of New Windsor, Orange County, N.Y., for the structure described herein:

Owner's Name: LEONARDO, CONSTANTINE

Address: 18 OAK STREET, NEWBURGH, NEW YORK

Architect's Name: EUGENE D. NINNIE

Address: RTE. 9B, WAPPINGERS FALLS, NEW YORK

Builder's Name: LUZON ENVIRONMENTAL

Address: 1 INDUSTRIAL PARK DRIVE, WOODBRIDGE, NEW YORK

Location of Building: RTE.300W/S

Material: SEE PLANS

Number of Stories: 0.0

Number of Families: 0

Dimensions of Building: SEE PLANS

Dimensions of Lot: SEE PLANS

Use of Building: TANKS/CANOPY

Number of Bedrooms: 0

Number of Toilets: 0

Number of Bathrooms: 0.0

Heating Plant: REPLACE TANKS WITH DEC APPROVED TANKS AND

Remarks: 24'X36' CANOPY ONLY

Approximate Cost: \$\$\$\$\$\$500.00

1. I am familiar with the Zoning and Building Ordinance of the Town of New Windsor, and do hereby agree to abide by them.
2. The information stated above is correct and accurate.

Signature of Applicant

IMPORTANT

1. A permit under which no work has commenced within six (6) months after issuance, shall expire by limitation, and a new permit must be secured before work can begin.
2. It is the responsibility of the owner and/or contractor to comply with all applicable town ordinances and to call for the required inspections at least one day in advance.

Signature of Building Inspector

DISTRIBUTION: WHITE to APPLICANT, YELLOW to FILE, GREEN to OFFICE

8-11-93

Contains discussion Re: The Site Plan (93-22)
24

COASTAL GASOLINE SUBDIVISION (93-2⁵) Rt. 207

Eugene Ninnie appeared before the Board for this proposal.

BY MR. SCHIEFER: Has everyone read the letter enclosed in your file on this issue?

BY MR. DUBALDI: Oh, yes.

BY MR. SCHIEFER: Just asking.

BY MR. VAN LEEUWEN: I'd like to make a motion, okay, that we order the Town Building Inspector to put a stop work order on this project immediately. We were told that the canopy would not be installed. They installed the canopy. They didn't go through the Zoning Board. They didn't do nothing.

BY MR. PETRO: Have they made application to the Zoning Board?

BY MR. BABCOCK: It's on my desk right now.

BY MR. PETRO: Just now? Application has been on.

BY MR. BABCOCK: Well, they got referred from this Board the last meeting and I have to wait for the minutes and whatever it is on my desk right now and we have some technical questions to ask them. We need a new plan with some more information on it before we can refer it. I just realized that today. Matter of fact, we called him today and he delivered it, so it's just a matter of doing that.

BY MR. PETRO: There's a motion before the Board. Let me just clarify one other thing. Did we not in fact say at the last meeting they could continue with work on the canopy as long as they were going to go through the correct steps to the Zoning Board, if they had application to the Zoning Board and then they were going to be referred back to us later that a top work order would not be issued?

BY MR. VAN LEEUWEN: Not to put the canopy up, Mr. Chairman.

BY MR. BABCOCK: It was not. What I understood was that we could let them go ahead and put the footings and continue doing tank work and so on and so forth

that they had the permit for, but not to install the canopy until the Zoning Board of Appeals and at that time Mr. Van Leeuwen wanted to stop work order then or not let them put up the canopy and so on and so forth. I said we are going to have to give them a stop work order if you guys aren't going to send them to the Zoning Board of Appeals. So the referral was done from this Board to the Zoning Board of Appeals and Mr. Ninnie is the one that wrote that letter to me, saying that he did advise his clients not to install the canopy and you --

BY MR. PETRO: That was going to be my next question. Was your client aware of our request to not put up the canopy?

BY MR. NINNIE: That is correct, he was, but there is another stipulation here and that is the people are contracted to erect the canopies are all over the country. They are only one contractor. He wouldn't be back here in six months, so he elected to take the chance of putting it up.

BY MR. VAN LEEUWEN: Well, he took that chance, now he's out of luck.

BY MR. NINNIE: The recourse is probably a stop work order and he is well aware of that and I told him what is going on.

BY MR. DUBALDI: Why couldn't you contact us while you're doing it? You had ample time.

BY MR. NINNIE: Well --

BY MR. VAN LEEUWEN: Our building inspector didn't even know it was going up. Nobody even made a phone call. They just put the thing up. That is why you people want to play games, we can play games also.

BY MR. LANDER: I second the motion.

BY MR. PETRO: Motion has been made and seconded that the New Windsor Planning Board issue a stop work order or have the building inspector's office of the Town of New Windsor issue a stop work order on the Coastal Gasoline Station subdivision on the corner of Route 32 and 94 in Vails Gate due to the lack of cooperation with this Board. Is there any further discussion with the Board members? If not, roll

call.

ROLL CALL:

MR. SCHIEFER: Aye.

MR. VAN LEEUWEN: Aye.

MR. LANDER: Aye.

Mr. DUBALDI: Aye.

Mr. PETRO: Aye.

BY MR. PETRO: I think, in lieu of that, I think to further show to your client that we mean business, we are not going to review this tonight and he can further review the comments and there are some comments Mike can go over with Mark. We don't want to prolong it forever. He has the mess on the house on the corner there. There was a young lady here last time which was aware there was many problems with the house on the corner and with this site plan and that we are looking at tonight, so we are not going to review it. You can further your application again and come back with Mark and start over.

BY MR. KRIEGER: When was this plan submitted?

BY MS. MASON: The subdivision?

BY MR. KRIEGER: When was the application made or is it subdivision we're looking at or --

BY MR. NINNIE: I'm assuming it's a subdivision and we already presented the Board with the site plan on July 21st as a recommendation from the engineer and the Board, we were going --

BY MR. VAN LEEUWEN: There is also a subdivision.

BY MR. NINNIE: So I'm really satisfying a formality here.

BY MR. KRIEGER: when was this submitted?

BY MS. MASON: August 3rd.

BY MR. SCHIEFER: That is a week ago.

BY MR. KRIEGER: Mark, did you review this at a workshop, this plan? I mean did you review it for comments for tonight?

BY MR. EDSALL: Yes, I did, the plan needs some work, but they have a similar situation where their subdivision application as they do with their site plan application. They need variances. So although you may not want to talk about the site plan tonight, you may want to disapprove the subdivision or take action, not to approve it as it may be, because their subdivision cannot comply with the zoning either. They need variances for that.

BY MR. SCHIEFER: So they have to go to the Zoning Board of Appeals.

BY MR. EDSALL: If they are going to go forward.

BY MR. VAN LEEUWEN: I am going to take the same stance last time because I knew what was coming. I'm not going to give them anything until they comply with the rules of this town. You have to comply. You have to comply. You have to comply and I have to comply. Why should they not have to comply? That is what we sit here for, gentlemen, to protect the people of this town. It's not being done. They just go ahead and do what the hell they want to do. Now let them do what the heck they want to do. They are going to do it anyway.

BY MR. PETRO: I really am in some agreement with Mr. Van Leeuwen this time. He went ahead and put up a canopy against our wishes.

BY MR. VAN LEEUWEN: We are going to make him tear it down. That is my motion.

BY MR. PETRO: To deny this and send it to the Zoning Board, there is no time lost, not that we are trying to make an applicant lose time, but nothing has been lost or gained here. It's just you are getting a stop work order but he can say so what.

BY MR. NINNIE: So what is our next step here?

BY MR. VAN LEEUWEN: Take the canopy down, comply with what the law is and the rules of the town of New

Windsor and every other town has the same type of rules. We are no different than anybody else. Anybody want to come into this town and just because they have got to wait two or three months to have the canopy go up and they say they are going to put it up anyway, as far as I'm concerned --

BY MR. NINNIE: I don't think that was the intent. It was a misunderstanding. What I'd like to do --

BY MR. VAN LEEUWEN: Our building inspector received a letter from you people stating that the canopy would not go up and under those agreements he gave the permit to put the footings in and put the tanks in, change the tanks. That was as far as you were supposed to go. Now, all of a sudden I go past last week and I see the canopy up. Why don't you put the whole thing up and we'll tear the whole thing down.

BY MR. PETRO: What do you think the intentions were?

BY MR. NINNIE: His agreement was to go ahead and erect the canopy, the footings, and put in the tanks as per his permit. He's entitled to it. The best I can do is advise him and tell him what he's doing is wrong. He elected to do it on his own. Fine. I told him the consequences. That is all I can do. I can't put a gun to his head and make him stop.

BY MR. NINNIE: I think it best at this time we are not going to take any action tonight, let's table this. Make your request on the next agenda. I'd advise you to get with Mark. Maybe clear up a few things. At that time we'll again look at the subdivision and if we disapprove it at that time, go to the Zoning Board.

BY MR. NINNIE: Back to my original question here, he take the canopy down, now what is our next step after we take the canopy down?

BY MR. BABCOCK: Come back for the denial to go to the Zoning Board. Right now they are not going, you need denial for the subdivision to go to the Zoning Board because they need to clear it all up. The subdivision and the site plan and the canopy. So it all needs to go to the Zoning Board.

BY MR> VAN LEEUWEN: At the last meeting, your young lady was here, she was told explicitly this Board

will work with them 100% providing they do something with the eyesore of the house there. That house has been there for years. It's in the entrance of our town. People are disgusted with it. The Board is disgusted with it and she said she would discuss it with you and get back to you. Also, there is a letter, our building inspector was told that the canopy would not be erected, only the footings and the tanks and that is what he has got a permit for. He didn't get a permit for the, get a permit for that.

BY MR. BABCOCK: He got a permit for the tanks, the pumps and the canopy when we realized that the canopy was in violation of the zoning ordinance, the reason we realized that is because Mr. Ninnie came into the workshop and Mark picked that up, Mark called me up, I came in and we discussed it and I said to Mr. Ninnie what we'll do now at this point is get in front of the Planning Board so we can get the approval to have the canopy there. At the next workshop I talked to Mr. Ninnie and I advised him as their engineer that not to put up the canopy and he told me at that day he can only refer that information to the applicant.

BY MR. NINNIE: That day I called him and I told him and I told him.

BY MR. VAN LEEUWEN: I'm not mad at you.

BY MR. NINNIE: I understand.

BY MR. BABCOCK: He said that he would agree with me that the canopy should not be placed except they go ahead since they are doing the ground work and put the footings in, that is not a problem with me. And then you can see the letter that Mr. Ninnie wrote advising his client not to put it up. What the problem here is that the application cannot go anywhere unless you give this thing a denial to go to the Zoning Board of Appeals. So I think in all fairness what we have to do is tell the applicant what do you want me to do and then we'll proceed with your application. If you want him to take down the canopy and then you proceed with the application or come in next week or next agenda or what you want to do. That is, cause right now it's stalled.

BY MR. PETRO: What I would like to do --

BY MR. BABCOCK: If we don't proceed, it's never going to get approved.

BY MR. PETRO: Let me give you my personal opinion. I think taking down the canopy, even though I believe it should be, might be somewhat harsh. I would say in my opinion to allow, we'll continue with this but I would tell you and your client that the Planning Board procedure is very long and tedious and this particular application is going to be held really to the letter of the law from here on in and out and I mean everything and he's not going to, it's going to take quite a while. Not that we are going to make him do more than he should do, but sometimes instead of a six foot tree, we might say okay four foot tree. We want six foot tree and it's going to be that all the way through as far as I'm concerned. I think it should proceed. We can get the thing moving but I think he's going to have to really toe the line.

BY MR. SCHIEFER: I personally am as annoyed as anyone else, but at this stage, I don't see that taking down the canopy is going to achieve a hell of a lot. If they get the variance and the same thing goes right back up again.

BY MR. PETRO: We want the corner cleaned up. Everyone agrees to that.

BY MR. SCHIEFER: I completely agree with the stop work order, stop this thing, but I don't think we ought to go as far as taking the canopy down.

BY MR. BABCOCK: I think the work is pretty much at an end right now.

BY MR. NINNIE: Almost sure it is.

BY MR. SCHIEFER: They can't use anything.

BY MR. BABCOCK: No, the stop work order is just a matter of paperwork.

BY MR. PETRO: Ron?

BY MR. LANDER: Stop work order, I think we could proceed with sending him to the Zoning Board of Appeals with this other thing, but I'm only one member here.

BY MR. DUBALDI: Same thing as Ron.

BY MR. VAN LEEUWEN: What are your plans to do with the house, have you discussed that, the old house at all?

BY MR. NINNIE: This is another thing I'd like to ask the Board is what apparently that house has been an eyesore spot. Okay, so that is an understatement, but what I would like to do is find out what would you think in your own mind on what the problem there is, what is the problem?

BY MR. DUBALDI: It's there.

BY MR. NINNIE: Just doesn't have a coat of paint?

BY MR. PETRO: You have to provide proper parking.

BY MR. VAN LEEUWEN: That house has been there for 20 years. It is an eyesore coming into Vails Gate. I think it's very unfair for one person we just cleaned up a building down there on 207, okay, which is this town is going to be a popular town. We want the eyesore taken down or redone. It should be taken down because it doesn't come anywhere near the zoning. The zoning codes of this town, there's no parking there.

BY MR. NINNIE: Redone cosmetically on the outside?

BY MR. VAN LEEUWEN: It will never get done. I have been on this Board over 20 years and it's been promised before.

BY MR. PETRO: Any use in the building has to get together and provide on the site plan ample parking spots.

BY MR. VAN LEEUWEN: What we are going to do if this thing ever does get approved, we are going to tie that house right into the rest of it and it's going to be bonded, so he's either going to pay or he's got to get a bulldozer to get rid of it. Those are the choices or fix it up. But it can't stay the way it is.

BY MR. DUBALDI: How about tear down the building and we'll let you keep the canopy.

BY MR. NINNIE: You have two tenants here. One tenant is in the house, the other tenant is with the gas station. The proper owner is Leonardo himself.

BY MR. VAN LEEUWEN: He owns both pieces, he owns the building.

BY MR. NINNIE: He owns everything.

BY MR. VAN LEEUWEN: You go right around the corner from the gas station, somebody else owns another eyesore. That old gin mill, that's another eyesore, that is all we have got on the corner, eyesores.

BY MR. KRIEGER: I'm confused, others may be confused. Are you, when you're talking about the eyesore that you find particularly irritating in the beginning are you talking about the one known as Club 32 or the other one?

BY MR. SCHIEFER: The dive shop is the primary, the other one is Club 32.

BY MR. PETRO: Let's recap this. We did have a motion and seconded. We voted that a stop work order will be issued tomorrow morning for this site. Secondly at this time, we polled the Board and I think we could go further if we had a motion to approve this, it would be sent to the Zoning Board I assume, assuming that the motion would do that. Motion was defeated and it would be sent there and again, I think we have ample time to convey to the owner of this project the seriousness of this Board and that it's intentions will be met.

BY MR. NINNIE: If you're tying in the dive shop with the entire parcel.

BY MR. VAN LEEUWEN: Absolutely.

BY MR. NINNIE: What do you want to see, other than a site plan?

BY MR. VAN LEEUWEN: We want you to come up with something for the dive shop, either tear it down or show us a plan where you're going to rehabilitate it.

BY MR. PETRO: It's that simple. We don't have to go any further than that.

BY MR. SCHIEFER: We don't want to design it.

BY MR. DUBALDI: We want to bulldoze it.

BY MR. PETRO: Can I have a motion, please, from somebody for Zoning Board of Appeals, motion to approve this?

BY MR. SCHIEFER: I make a motion we approve the Coastal Gasoline subdivision site plan.

BY MR. DUBALDI: I'll second it.

BY MR. PETRO: Motion has been made and seconded that the New Windsor Planning Board grants approval to the Coastal Gasoline subdivision. Is there any further discussion from the Board members? If not, roll call.

ROLL CALL:

MR. VAN LEEUWEN: Abstain.

BY MR. SCHIEFER; No.

BY MR. LANDER: No.

BY MR. DUBALDI: No.

BY MR. PETRO: No.

BY MR. PETRO: You have been referred to the Zoning Board, good luck.

BY MR. EDSALL: There are comments on the subdivision and they will have to be addressed before the referral can be made.

COASTAL GAS

MR. SCHIEFER: I would like you to read into the minutes what the Town Board did on our stop work order on the gasoline station. I want that in the minutes.

MR. PETRO: Mike?

MR. BABCOCK: We had a meeting today, myself, the attorney for the Leonardos, the Leonardos, Tad Seaman and George Green and basically what they explained to us was that if the stop work order stays on the project, that it's the end of the project. They have the time commitments and they have signed contracts so on and so forth and they have spent a ton of money getting the tanks out and doing the restoration that is there and if they can't continue with the restoration at their own risk, they are going to lose the whole project. So it was agreed upon that they made up an agreement, it was a written agreement that was sent back to me couple hours after the meeting stating that they would proceed with the construction of the project, the stop work order would be lifted, they would proceed with the construction on the project and that they would continue the process to the Zoning Board to get their appropriate variances and then back to this board to get their final approval and that they would not go into operation until they had those approvals.

MR. DUBALDI: How did the Town Board vote on that?

MR. BABCOCK: Town Board members weren't there.

MR. DUBALDI: Who lifted the stop work order?

MR. BABCOCK: I did based on that meeting.

MR. VAN LEEUWEN: Mike has a right to do that.

MR. SCHIEFER: I'd rather agree Mike can do it but I thought the Town Board--

MR. VAN LEEUWEN: That is the way it was explained to me.

MR. DUBALDI: So the Town Board didn't lift the stop work order, you did?

MR. BABCOCK: Yes.

MR. PETRO: You were in George Green's office?

MR. BABCOCK: Yes.

MR. PETRO: Mr. Green was privy to what was going on?

MR. BABCOCK: Yes.

MR. DUBALDI: Not the rest of the Town Board members, just George?

MR. BABCOCK: Yes.

MR. SCHIEFER: I feel a little better.

MR. VAN LEEUWEN: Town Board is the one that wants something done with the house which we're trying to do, okay, forget it, it's okay with me. Doesn't make any difference, they want the eyesore there, let it stay there, done.

MR. SCHIEFER: Thank you.

MR. DUBALDI: I move we adjourn the meeting.

MR. SCHIEFER: Second it.

ROLL CALL

MR. VAN LEEUWEN	AYE
MR. SCHIEFER	AYE
MR. DUBALDI	AYE
MR. PETRO	AYE

Respectfully Submitted By:

Frances Roth
Frances Roth
Stenographer

8/30/93

Tad - Pls. review ; call me back ⁵⁶²⁻⁸⁰⁷⁷

AGREEMENT

Pr
(Richard Clemens)

WHEREAS, the parties to this agreement, CONSTANTINE LEONARDO, residing at 18 Oak Street, Newburgh, New York and M & T REALTY CORP. doing business at 785 Broadway, Kington, New York 12401, hereinafter referred to as "OWNERS", and the TOWN OF NEW WINDSOR, hereinafter referred to as "TOWN",

WHEREAS, owners are the owners and tenants of premises located at Rt. 94, Town of New Windsor, New York which premises are currently under construction to transform the premises to be used for retail gasoline and convenient store purposes and

WHEREAS, issues relating to site plan approval and variances have been submitted and are now pending before the Town of New Windsor Planning Board and Zoning Board of Appeals, and

WHEREAS, a stop work order has been issued by the Town of New Windsor Building Inspector and said order is currently in effect, and

WHEREAS, the owners seek to have the stop work order vacated and rescinded to enable them to continue to renovate the property for its intended purpose,

NOW, in consideration of the promises contained herein, the parties agree as follows:

1. That the Town's stop work order be vacated or rescinded.
2. That owners agree that any renovation and construction work performed by them hereafter shall be made with the express understanding that the repairs and improvements, may or may not be acceptable to the Town of New Windsor Planning Board or Zoning Board of Appeals.
3. The Owners acknowledge that the Town makes no representation that any work performed by the owners will be in accordance with the decisions to be hereafter made by the Town of New Windsor Planning Board and Zoning Board of Appeals or that a certificate of occupancy shall hereafter be issued following the completion of the construction.

Dated: August 25, 1993
New Windsor, New York

CONSTANTINE LEONARDO

M & A REALTY CORP. by MITCH NESHEIWAT

TOWN OF NEW WINDSOR

DISCUSSION

COASTAL/STOP WORK ORDERS

MR. PETRO: We've had a lot of hoopla back and forth, we have had some letters, interoffice correspondence from the attorney for the Town. We've had some of our own from Andy Krieger, Planning Board attorney, we've had counsel people involved, other members of the Planning Board involved. Has everyone read and received all these memos?

MR. VAN LEEUWEN: No, I just got it now.

MR. PETRO: Does any Planning Board member have any comments on this? And would like to share them now for the minutes?

MR. VAN LEEUWEN: I have none.

MR. SCHIEFER: I'd like someone to explain the status of this whole thing. I got 2 letters from attorneys and what's the, Ernie, could you tell us where we stand?

COUNCILMAN SPIGNARDO: I haven't seen the letters, I'm sorry to say.

MR. BABCOCK: Myra has an extra copy.

MR. PETRO: As far as the Chairman of the Planning Board, I had asked and directed Andy Krieger to do was not just in particular on this ATI problem or Coastal whatever that is but for future reference for future reference, I wanted to know where we stood with the stop work order, such as it may be called, Andy insists basically that there's no such item and to me, reading both Andy's sheets and Tad Seaman's, it's how you interpret the law but the bottom line is the law is still the law and no matter who is interpreting, it still has to be followed through and most of that following through is done through the building department which may be directed and it may be directed from some old lady down in Ducktown but he still has to follow through on the law so whether it's coming from a

supervisor or Town Board member or Planning Board chairman or Planning Board member, the law is the law. Am I saying is that correctly Andy?

MR. KRIEGER: Yes. I want to, if I may add one thing to the letter that I had sent out I hadn't given you a cite for the paragraph to the effect that the Planning Board is the only authority that can authorize the building inspector to issue a building permit where a site plan is required which I'll do now. That is in 48 among other places, it's in 4819 of the Town Code.

MR. DUBALDI: I just want to make a comment because under Tad Seaman's comments here it says I'm not going to read the whole thing, it talks about the Planning Board's authority and it says number 1. Review and approve, 2. Approve with modifications or 3. Disapprove and Tad goes on to say this is the limit of the Planning Board's authority. The Planning Board has no authority to direct the building inspector to issue stop work orders, remove stop work orders, issue building permits, refrain from issuing building permits or or perform any other function that involves administration of the progress of work and development of the project so what we just did by requiring Washington Green holding back certain C.O.s saying that they can only have certain ones and they can't have certain ones, they can't have other ones is not our authority according to what Tad just said right here.

MR. PETRO: We may suggest it to the building inspector whose authority it may be.

MR. DUBALDI: Our vote is only a suggestion that Mike actually has the authority to do.

MR. PETRO: That is correct but according to what Andy is saying, if the law is not followed through and completed upon, and not done to the precise letter of the law, Michael is required to do that and we're informing him that the law has not been followed through and acted upon.

MR. DUBALDI: But we cannot as a board vote to force Mike to act.

MR. VAN LEEUWEN: We never forced Mike to act.

MR. BABCOCK: Line on Washington Green, basically today which started I would say several years ago, we had no basic enforcement power or anything. You guys said what happened a guy would come in and promise, yeah, I'll do this, yeah, I'll do that and go out get his building permit, build the building, get a C.O. and never do anything so we were in the process of making Town Law where people would bond things which we have now. So for a long period it was our policy it might not be a written issue that the Planning Board is doing this or I'm doing it but for a matter of policy, what we did was if you had site improvements done, I have been doing this since January 1st of 1987, I have bonds from that day that, I have asked for that we don't have a law on record saying you do have the right so it's been a policy that we work as the building department and the Planning Board working together getting that done. Now we have the law we have the right to ask for a bond. Washington Green is something different because it was approved before the law came into effect. Hilltop, the bond that they are putting up or not the bond but the cost estimate is a matter of law today so the older projects didn't have that so it is a matter of what the board has a policy of doing.

MR. VAN LEEUWEN: I think it's basically up to the board and the building inspector and that is what Andy really means when he says that.

MR. PETRO: It's up to all the agencies to work together.

MR. KRIEGER: I have reviewed Tad Seaman's letter and there are points on which we agree and there are points apparently on which we disagree. Generally speaking, he's right when he says the Planning Board's authority or Planning Board's responsibility is that of an administrative agency to review and approve, approve with modifications or disapprove. However, if the Town Code calls for site plans, 4819 says the only authority that can issue, that can authorize the issuance of building permit is the Planning Board, the only authority that

b6
b7C

can authorize the issuance of a building permit. It is from you that the Planning Board cannot, if the building inspector does other than that, the Planning Board has no enforcement capability, or they are not the building inspectors, direct supervisor, however the law says that the only authority that can authorize the issuance is the Planning Board. Furthermore, the building inspector is an independent person. He's not an employee of the supervisor's. If one feels aggrieved by something the building inspector has done or not done, then the place you go with that grievance is Supreme Court with an Article 78, not the supervisor's office. That is the authority that has been granted in the law. If he answers to anybody I suppose it's the Supreme Court and that is the point on which we apparently disagree and I also see no mention in his memorandum of the fact that contracts where governmental authorities agree not to enforce the law are void, not voidable, they are void and unenforceable right from the get go. They are not worth the paper they are printed on.

MR. SCHIEFER: The building permit was issued and the fact that the canopy extended out too far did not meet the Town Law, does that make the building permit void?

MR. KRIEGER: Yes.

MR. SCHIEFER: There's no building permit.

MR. KRIEGER: It makes it void. The law specifically says in a second I'll find the cite for you, a building permit issued in error is void and any work done pursuant to such a building permit is unlawful. The only defense that such a person would have is that they didn't know. Now we get into the so-called stop work order. This is why I say the only effect of the stop work order is a notice you say you thought you had a building permit but we're telling you right now you don't have a building permit and you can no more rescind that than you can recall the words that you have spoken from your mouth. Once you put somebody on notice, it's notice.

MR. DUBALDI: What work have they done on the site in

the last two weeks?

MR. BABCOCK: They are working it, you know I haven't been there myself but they are working.

COUNCILMAN SPIGNARDO: The problem you're having you haven't checked it out see what they are doing at all?

MR. BABCOCK: No.

MR. LANDER: They got a building permit, they've got an agreement with the supervisor's office to go ahead and continue doing what they are doing, whatever they are doing.

MR. KRIEGER: Which agreement was never signed by anybody on behalf of the Town of New Windsor.

COUNCILMAN SPIGNARDO: I spoke to the Code Enforcement Agency in Albany, I called them up and their opinion was that the supervisor on his own did not have the authority to do this, the Town Board as a whole wants to get involved. That is another story but he says the way it looks to me, the building inspector got something rammed down his throat. Now that doesn't sound too good from my end here but I think--

MR. PETRO: That is not what Tad is saying.

COUNCILMAN SPIGNARDO: I don't agree with what Tad says.

MR. KRIEGER: I would agree with what Councilman Spignardo has said when I cite the Town Law, the only authority that has the legal right and ability to change that law is the Town Board. If they change the law, then it says something different and you do something different but until it is changed, it is the law and it is what I said.

MR. PETRO: Michael, the status of the building permit as it stands now they are going to continue, they are going before the Zoning Board for the variance needed on the overhang there.

MR. LANDER: Memory serves me correctly, the building permit was issued to these people so that they can

remove the tanks, put the footings in and do some work on the site, not put the canopy up. They were told specifically.

MR. VAN LEEUWEN: Mike got the letter stating they wouldn't.

MR. LANDER: They turned around and did it anyway. Specifically not to put the canopy up so I think that invalidates that building permit. Well, then they don't have one. How can they work there? Whether or not the building permit was, well, whether or not the building permit, the canopy was listed on there or whatever they were advised by this board because they didn't have site plan approval number one. Number two, they had a variance they had to get so what if they don't get the variance then what?

MR. VAN LEEUWEN: Then they have to take it down.

MR. KRIEGER: There's one other item that I didn't put in the memo but that I did discover during my research that I want to advise the board of by State Law the Planning Board may and the Planning Board is the only agency which may impose conditions, reasonable conditions on the issuance of a site plan. The approval of a site plan, while it doesn't talk about the Planning Board having the authority to authorize the issuance of a conditional building permit, it does say that the, and apparently it is well established that the Planning Board has the authority to impose reasonable conditions in the granting of a site plan so by extrapolation, I would say the Planning Board is the only authority that has the legal ability to impose conditions on the developer.

MR. PETRO: Has everyone seen the agreement?

MR. DUBALDI: No.

MR. PETRO: Anyone read the agreement?

MR. SCHIEFER: No.

MR. LANDER: Which agreement is that, Mr. Chairman?

MR. KRIEGER: This is--

MR. PETRO: This is the agreement between the Town of New Windsor. It's short enough, it's important enough, I'm going to read it into the minutes. AGREEMENT

Whereas the parties of this agreement Constantine Leonardo, residing at 18 Oak Street and M & T Realty Corporation doing business at 785 Broadway, Kingston, New York 12401 hereinafter referred to as Owners and the Town of New Windsor hereinafter referred to as Town. Whereas, Owners are the owners and tenants of the premises located on Route 94 in the Town of New Windsor, which premises are currently under construction to transform premises into, to be used for retail gasoline and convenient store purpose and Whereas, issues relating to the site plan approval and variances which have been submitted and are now pending before the Town of New Windsor Planning Board and Zoning Board of Appeals and Whereas a stop work order has been issued by the Town of New Windsor Building Inspector and said order is currently in effect and Whereas the Owners seek to have the stop work order vacated and rescinded to enable them to continue to renovate the property and for its intended purpose. Now in consideration of the promises contained herein, the parties agree as follows. Number 1. That the Town stop work order be vacated and rescinded. 2. That Owners agree that any renovation and construction work performed by them hereafter shall be made with the express understanding that the repairs and improvements may or may not be acceptable to the Town of New Windsor Planning Board or Zoning Board of Appeals. 3. The Owners acknowledge that the Town makes no representation that any work performed by the Owners will be in accordance with the decision to be hereafter made by the Town of New Windsor Planning Board and Zoning Board of Appeals or that a certificate of occupancy shall hereafter be issued following the completion of the construction. Owners agree to continue to proceed with their application before the Zoning Board of Appeals for the variances with their application before the Planning Board for site plan approval. Number 5. Owners agree and understand that there shall be no occupancy of the premises nor shall the premises be

used for commercial purposes until any and all Town Planning Board and Zoning Board of Appeals approvals are obtained and a certificate of occupancy shall be issued. Dated August 25, 1993, New Windsor, New York signed by Constantine Leonardo and M & T Realty Corporation by Nesheiwat. It is not signed by anyone from the Town of New Windsor.

MR. DUBALDI: Basically what that says put up what you want and you don't have to do anything for approvals and then you can get your approvals later on. That is basically what it says. Go put up what you want at your own risk before you get any kind of approvals or any kind of permits or anything like that. That is exactly what that says and that is going to be used as a precedent. There's going to be other applicants that come before the Planning Board and say well, this guy went and built things without getting approvals and we did this beforehand and it's not going to stop them.

MR. LANDER: Number 2 sounds like they can do whatever they want and whether you like it or not that is tough, that is what I read.

MR. KRIEGER: For the record, I also want to notify the board that is the only agreement, I verified that with the Town Attorney, that is it and when I talked about the written agreement that single page that Councilman Spignardo is now looking at.

MR. SCHIEFER: There's nothing signed by any Town officials.

MR. KRIEGER: Nor is there anyplace on the so-called agreement.

COUNCILMAN SPIGNARDO: What it means is they can go ahead at there own risk, they may stand a good chance of the Planning Board turning it down then again the Planning Board may not turn it down.

MR. EDSALL: Not having really been involved in everything up till this point--

MR. LANDER: You're not alone.

MR. EDSALL: --it's just interesting to note that the whole concept of proceeding at your own risk was found unacceptable back in 1989 when Local Law number 4 was adopted by the Town under Section 4819 C 1, I'll just read it because I think it kind of puts it to a close. It says when any development of land is proposed to be made and before any application for a building permit is made, and before the erection of any structure within such proposed site plan shall commence or any grading, clearing, construction, topographical alteration or any other improvements understand therein the applicant or his duly authorized agent shall obtain final approval of such proposed site plan in accordance with the procedures set forth in these regulations or shall obtain the specific approvals for such grading, topo or other site improvements from the Planning Board. Now, I think the reason that was adopted as a local law in '89 was so that people didn't go ahead and construct work before they had the input from the Planning Board. So it really, it doesn't matter if you proceed at your own risk, this section of law says you can't proceed at your own risk, it's illegal.

MR. DUBALDI: This is setting a bad precedent.

MR. SCHIEFER: They aren't the only ones that broke the law.

MR. LANDER: That is true, I can name a few.

MR. SCHIEFER: I don't want to.

MR. LANDER: They have been behind closed doors, it was all taken care of, an agreement was made on those two so--

MR. SCHIEFER: I basically want that station there, I have no problem with the canopy being oversized, I don't want to see them torn down but I see the procedure as being done illegally.

MR. DUBALDI: It's not for us to say whether the canopy is legal or not, that is for the Zoning Board.

•

MR. VAN LEEUWEN: I don't even listen when they say I already have money, they did it at their own damn risk.

MR. EDSALL: It was done for that specific reason to protect developers from paying twice to do it right.

MR. LANDER: I think when we had that first meeting Henry had the right idea, don't give them anything that was your expect words, don't give them anything because they are going to to go in there, they are going to do what they want to do and not going to fix any of the buildings.

MR. VAN LEEUWEN: I have been here 20 years, it's been played on me how many times. You guys want to go ahead, I'm not the board, went ahead and did it. I'll tell you something, we lost all our clout. That house is going to stay exactly the way it is for the next 25 years, mark my word.

MR. DUBALDI: What's your opinion on all this? What do you think the Planning Board, what do you think we should do?

MR. VAN LEEUWEN: The only thing I'm interested seeing the house fixed up or torn down. The rest of it doesn't bother me. The one eyesore I want to get rid of. I sit here for the people of the Town. I don't sit here for myself or any other reason. I think the people deserve a little better than the old shack sitting on the corner. That is exactly what I said in the beginning. That is what I said today, we have been after that shack for 20 years, now we get chance to get rid of it, do something about it. Forget it, that is all I'm going to say.

MR. SCHIEFER: I don't want to see the Town get involved in a legal action and I think so much has been done that is going to happen somehow or another we have to get together with everybody involved and solve this amongst ourselves.

MR. PETRO: You have two things here.

MR. SCHIEFER: If this goes out and hits the

newspapers, we all look like jackasses.

MR. PETRO: I still believe that we have as the Planning Board for the Town of New Windsor whether the supervisor's office or not and Andy can back me up, we can still proceed. The law is being broken and proceed with a stop work order. We can request the building inspector if we want to do that to stop this whole thing of course we're going to open up a big can of worms by doing that.

MR. VAN LEEUWEN: I don't think that is a good idea right now.

MR. PETRO: Now number 2 is if we don't want to do that--

MR. VAN LEEUWEN: That is what I'd like to do, I'd like to see the canopy be torn down.

MR. PETRO: Just because we want to do it, it might not be the best thing. But I do believe that we could at least make such a big stink about it but like Carl said, it would get in the papers so we don't need that. How can we enforce these people to get back in here at this time with the site plan? I know you said they are going to the zoning, they are working on it and just get it over but the bottom line is we want the job done right. We don't necessarily just--

MR. SCHIEFER: Even before we get them in, we have to get together with the supervisor, possibly the Town Board and Tad Seaman, resolve the thing amongst ourselves. Who can do what, I don't want to go off and do the same thing and start all over again but I'm being told that everything they are doing is illegal, they've no building permit, the supervision took an action that is questionable and I have two legal opinions that seem to disagree. I'd like to sit down amongst ourselves, see what he we can hammer out and then we take action.

MR. PETRO: In the meantime, applicant is buiding.

MR. DUBALDI: What does Town Law say about referrals to

the Zoning Board about matters of variances, who can refer to the Zoning? Does it have to be done by the Planning Board?

MR. VAN LEEUWEN: No, we don't have to give them any referral. They can go to the Zoning Board on their.

MR. KRIEGER: It has to come from the building inspector.

MR. BABCOCK: It's a matter of policy again Carmen when we started out, people would come to me and I'd see that they needed a variance, I'd send them to the Zoning Board first then they'd come to this board and the board would say I don't want the parking in the front but in the back. It would change their variance so matter of policy through the chairman at the time we decided anything that needs a variance we'd send to the Planning Board first, let you guys are the ultimate power that is going to say yes or no to that building, even if the Zoning Board gives somebody a variance you don't have to approve it. So we want to get you guys conceptual approval, if they got the variances, you'd continue on the process instead of wasting somebody's time at the Zoning Board. It's a matter of total policy. The issue came up, the chairman signed, then Mark signed them I signed them. Basically, it doesn't matter to the applicant, I'm sure it doesn't matter to this board, I'm sure who signs the referrals, it's a matter of policy.

MR. EDSALL: As of July of this year, they amended the State Law and the only one who has authorized to refer anything to the Zoning Board of Appeals is the building inspector. Well, fine, we do the same as we always did, we get input from the Planning Board, he signs the form instead of Jim but the point is Mike has to do it now but following the same process which is the best process.

MR. PETRO: What procedure do we want to take right now on the corner in Vails Gate on this application?

MR. VAN LEEUWEN: Right now, I would say leave it alone. They have to come back to us anyway and we'll

do the best we can when it comes back to us. It's got to go through a process and after the first of the year, when the new supervisor takes office, we have a meeting with the new supervisor and then Town Board and sit down and iron these matters out.

MR. SCHIEFER: My suggestion was I'd like to get together with the internal, with the Town people involved without the applicant, without the public, I'd like to resolve it amongst ourselves, not just our board but your gang, the supervisor and Tad Seaman because Tad and Andy the way I hear it they don't agree.

MR. LANDER: I'll second that.

MR. DUBALDI: One comment the whole thing is much a mess, I think.

MR. SCHIEFER: We have to resolve it.

MR. DUBALDI: Now we're going to wait four months, he's basically going to to proceed.

MR. VAN LEEUWEN: Nobody said to wait. I'm the only one member, he didn't say that.

MR. DUBALDI: What I am saying to this board is basically he is going to proceed doing site work until January without us we're basically like just going to stay out of it and let him do what he wants.

MR. VAN LEEUWEN: What do you want to do?

MR. DUBALDI: I don't know what to do, I get one opinion from the Town Attorney, I get another opinion from our own attorney. I don't know what to do.

MR. VAN LEEUWEN: If you want to start a war what we ought to do is put a stop work order.

MR. DUBALDI: I don't want to do that. I never wanted a war, I just want to do what's right and I want to do what's legal.

MR. PETRO: Let's ask the Planning Board attorney what he feels.

MR. KRIEGER: It's not really an attorney matter, it's a procedural matter. I would suggest to the board that it consider doing two things. One, that it have a joint internal meeting of the type that Carl has suggested for the purpose of ironing out procedures in the future. And two, that it ask the developer to appear here in discussion period so it can be made clear to the developer that they are not proceeding on this particular action, that they are not proceeding with the permission of the Planning Board and that they are proceeding at their own risk. They may not be aware of the severity of the agreement.

MR. VAN LEEUWEN: According to the agreement they signed they are aware of it.

MR. KRIEGER: They may think that that agreement protects them.

MR. VAN LEEUWEN: Why don't you invite them next meeting because I won't be here.

MR. PETRO: Basically, you have two suggestions that are the same only thing is one wants to wait and do it with the incoming supervisor, who would definitely be different than the one we have now and possibly some different counsel people or the other member has suggested is that we do it now with the people who are in office now.

MR. VAN LEEUWEN: I go along with either way.

MR. PETRO: Future procedure, as important as this one case, we want to clarify, put future.

MR. SCHIEFER: This case is not the issue, it's the way it's being done, I don't want this again and again.

MR. PETRO: We can table it for a meeting and find out if they are before the Zoning board and making progress and we can still handle it internally.

MR. BABCOCK: We would have done the site plan referral to the Zoning Board the next morning after the Planning Board meeting, as the Planning Board remembers there's also subdivision that has to go along with it. The subdivision line went between the two existing buildings which created necessary variances they had to hire Bill Hildreth to go out there to get the offsets of that line and building heights so it did take time. Myra has been after me everyday she said did you do that referral yesterday? I called Bill and said where is the plans so I can do this referral so basically, I'll do the referral the day I get the plan. That is how close it is, he told me it's done and presented to them.

MR. EDSALL: One other problem is that not only is there dimensions that are required for the setbacks required or created by the subdivision, but there may also be different values for the setback from the State right-of-way because of the recent takings so it appears that the initial information we received in the application was wrong so if they had obtained the variance, it wouldn't have been a sufficient variance so they would have had another problem and had to go through another public hearing and had another public hearing so they were not in fact prepared.

MR. LANDER: What kind of timeframe are we looking at here? When is the earliest they can get in and out of the Zoning and back here? Is it before the first of the year?

MR. DUBALDI: Ask the supervisor.

MR. BABCOCK: The 13th is next week, that is not going to happen so the earliest they can go to the Zoning Board would be the 27th of this month, they have to have preliminary approval and they have to have preliminary meeting and they have to have a public hearing so the first meeting in October is Columbus Day so possibly they can be back October 25 and then possibly it would be November 10th before you gentlemen would get to see them, if everything went smooth. I can tell you that the Zoning Board and I've seen it at this board when the Zoning Board's acting on a matter

that is already in place, they are not really happy about that.

MR. LANDER: Point is they are working there for how many months doing whatever they are doing?

MR. VAN LEEUWEN: And we're not going to get the building fixed.

MR. EDSALL: Just to get away from the legal issues and purely look at functionally they are progressing with their site plan notwithstanding the fact that they need variances for the subdivision and site plan, there's no reason why they couldn't be coming back to the meetings, working on the site plan they are doing that by choice. They can be before this board right now asking that you review the layout of the plan so that this could come to a completion standpoint and they can ask you for permission to go ahead and do the work which the law allows pending receipt of all their variances.

MR. DUBALDI: They have a signed agreement.

MR. EDSALL: I wasn't aware of that until tonight. I'm just saying there's no reason why they cannot make the corrections to the plan that you asked and be back here right now going over the site plan issues.

MR. LANDER: Because they need a subdivision first.

MR. EDSALL: Correct. What I am saying is they could be working off what's proposed in front of the ZBA and still be here but they are not.

MR. PETRO: Mr. Spignardo, do you have something to add to this?

COUNCILMAN SPIGNARDO: The way I see it I'm not trying to give any suggestions but first of all, I take it by all of you people you are very unsatisfied with the conditions there, the thing is not going according to plan, is that right?

MR. PETRO: I don't know about the building plans, just

that procedurally definitely not.

COUNCILMAN SPIGNARDO: Evidently, the building plans are not going right, otherwise you wouldn't have recommended a stop work order, right?

MR. PETRO: No, we recommended stop work order because they were not following building procedures.

COUNCILMAN SPIGNARDO: There's a disagreement as to the validity of the decisions from the Town Attorney and your board attorney. You have other problems that you are running up against so you are not happy with the whole deal so I suggest you just get together with the Town Board and thrash this thing out. Don't even recommend another stop work order because I wouldn't abide by this ruling if I were you cause all your power is taken away from you and that is ridiculous. The Town, one Town Board member does not have that authority. And I would challenge it if I were you, bring it before the entire Town Board.

MR. PETRO: Well, we definitely agree with you as Mr. Van Leeuwen and I said before, Carmen, we know that we are saying it's true but do we want to do that at this time.

COUNCILMAN SPIGNARDO: Absolutely, you want to do that.

MR. SCHIEFER: I do.

COUNCILMAN SPIGNARDO: Why won't you want to do that?

MR. LANDER: Let's have a meeting, why not.

MR. DUBALDI: Sounds good to me.

MR. PETRO: You are the liaison, can you set up the meeting?

COUNCILMAN SPIGNARDO: I'll set a meeting with the Town Board and I'll get back to you.

MR. PETRO: With the building inspector present and our attorney, is that possible?

COUNCILMAN SPIGNARDO: Absolutely.

MR. PETRO: You'll set it up and at this point, you'll be working about getting them back to the Planning Board.

MR. BABCOCK: If you want them to proceed, I can.

MR. SCHIEFER: Let's have a meeting first.

COUNCILMAN SPIGNARDO: Another point I'd like to bring out while it's true that the Planning Board doesn't have the authority for a stop work order but you do have an authority to recommend that a stop work order be made and if the building inspector doesn't do that, you have got a damn good complaint because there's something wrong with the project and if that thing isn't stopped, you have got a good complaint as to why.

MR. VAN LEEUWEN: We have had no problem with the building inspector, we recommended a stop work order and he did it the following day.

MR. PETRO: Building inspector follows through 100 percent.

MR. DUBALDI: Our beef is not with the building inspector, my beef is with the supervisor.

COUNCILMAN SPIGNARDO: I don't know who is at fault. Did you go to George with this?

MR. BABCOCK: No.

COUNCILMAN SPIGNARDO: How did this come about?

MR. BABCOCK: They hired a attorney, Richard Clarino, he called me to have a meeting, called to talk to me and he wanted to set up a meeting.

MR. PETRO: Okay, we'll get something set up, thank you.

MR. SCHIEFER: I make a motion we adjourn.

September 8, 1993

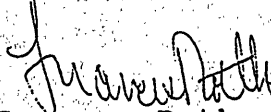
43

MR. DUBALDI: Second it.

ROLL CALL

MR. VAN LEEUWEN	AYE
MR. SCHIEFER	AYE
MR. LANDER	AYE
MR. DUBALDI	AYE
MR. PETRO	AYE

Respectfully submitted by:



Frances Roth
Stenographer 9/16/93

July 21, 1993

46

COASTAL GASOLINE SITE PLAN (93-22) CORNER OF RT. 94 AND
RT. 32, VAILS GATE

Ms. Barbara Sbraccia appeared before the board for this proposal.

MR. VAN LEEUWEN: What company are you with, ma'am?

MS. SBRACCIA: Civic Technologies. Evidently he had a meeting with Mr. Edsall and has changed this plan accordingly.

MR. PETRO: We have new plans here.

MR. DUBALDI: Are these new ones?

MR. EDSALL: Are these different than the ones you circulated Myra? The ones that are submitted for the meeting if they are the same as, have these been changed since the ones that were submitted?

MR. PETRO: I havd 7/1/93 is the date.

MR. VAN LEEUWEN: We already have a problem here guys, the house, the existing wood story frame house, the dive shop they have already been in front of us, we haven't seen them since they haven't done anything to the building.

MR. PETRO: Is this the same property, is that what you're saying?

MR. VAN LEEUWEN: All one property.

MR. EDSALL: What you will see in my comments that in fact they had met with the board and now we have and at that point were under the impression that the dive shop was on its own parcel and that the Hess or this proposed facility was on a separate parcel. As the survey bears out in fact it's one parcel which previously had a leased parcel which no longer exists what I am suggesting to you is that you review this as a single site plan while you include both the dive shop building and this portion.

MR. EDSALL: The buildings to the right of the planter that is shown here is a separate parcel.

MR. LANDER: It's not shown here that way.

MR. EDSALL: You'll see a property line splitting down the middle if you look at the plan on the left.

MR. DUBALDI: This shouldn't be shown at all then.

MR. VAN LEEUWEN: They should tell us.

MS. SBRACCIA: It has to be shown because it's not a legal subdivision. It is an estate which was left to Mr. Constantine Leonardo and I don't remember the other Leonardo's name it was to the two sons and in order to delineate ownership Constantine Leonardo has one and the other Leonardo has another. It's not a legal subdivision, however the two deeds are filed.

MR. PETRO: Do they get two separate tax maps?

MS. SBRACCIA: Two separate tax bills, I believe, I guess the only real way, yes, they are delineated on here, they've got two separate tax bills and just filed in the County Clerk's Office and as it says on here, deed Liber 228 page 133.

MR. VAN LEEUWEN: I think that we should make that a legal subdivision first and I'll tell you something before we really should go any further, I think what we should know what's going to be done with the two story frame building because that is an eyesore.

MS. SBRACCIA: I understand that Gene had asked for whoever the leasee is so he may contact that person. He has not been able to contact the leasee so he's put the information that he could without knowing who the leasee is on this map at this time. His main concern that I was told that Gene would like as a result from this meeting is a recommendation to the Zoning Board for a variance for this canopy that would be encroaching so for the zoning setback.

MR. PETRO: I'll try and help you out here. I think what's happened gentlemen and Mike you can bear me out with the story, is that the old gas station has been Michael has given these people a permit to start working on their building, on the gas station itself because they were going to requirements to remodel it as a station. What's happened through codes and fire laws they had to put up a canopy for the fire suppression. Once the canopy went up, it needed a variance because it's too close to the property line so what we can do as long as they are just working on the gas station, it's not going to be a change of use, I know there's more to the story, that is why they want to go to the Zoning Board. A permit has already been issued this is only for the gas station. There's a lot of site work that has to be done.

MR. BABCOCK: The permit right now that I issued we violated them to take out the tanks, the tanks were leaking also through DEC so the permit that I issued was for the removal and installation of new gas tanks and the installation of new pumps with a canopy and Ansel (phonetic) system and that is all the permit covers. It doesn't cover remodel of the building because they want to put a mini-mart in there so there's no permit on that. They are here for that approval to change it from just a gas station to a mini-mart and they are also here to get a referral to the Zoning Board because the canopy is going to be closer to the property line than the zoning allows.

MR. VAN LEEUWEN: I'll tell you something, I don't think we should do anything with this map until we know what is going to happen with that old house, it's an eyesore in this Town, it's been an eyesore.

MR. DUBALDI: Historic eyesore.

MR. VAN LEEUWEN: It's an eyesore, it's a piece of junk that has been there for as long as I can remember and what I'd like to see done is either fixed up, show us plans that it is going to be fixed or tear it down, it's an eyesore as far as I'm concerned I'm not going to refer this thing to the Zoning Board. I'm not going to do anything with it until that happens.

MR. PETRO: Let's touch on the other subject that you brought up is this or is this not a legal subdivision?

MR. VAN LEEUWEN: Can I say something to you? If somebody in there will and Andy can bear this out, I might be wrong and I might be wrong but I know I'm right somebody leaves that in a will, it becomes a legal subdivision, am I right? But while we're at it, we should treat it as a subdivision and get it handled for them. It will be a lot easier if they want to sell it because they'll never get title insurance.

MR. KRIEGER: That was my hesitation about you're talking about it being a legal subdivision. Yes, I suppose in a sense that nothing happens until you go to sell it but no title company will accept that.

MR. VAN LEEUWEN: That should be treated at this point and that old building should be treated before we do anything, don't go to Zoning Board, don't do nothing, let's treat that old building first, it's an eyesore, it's been an eyesore, everybody wants to do something about it now we have the opportunity. We either fix it up, clean it up or tear it down that is how I stand.

MR. LANDER: I think you're putting in new gas tanks, new pumps, I don't think they are going to leave the building in the shape that it is in now.

MR. VAN LEEUWEN: You know how long it's been there like that, 18, 19 years as long as I can remember. Now we have an opportunity to do something. If we don't do it now, it ain't going to happen.

MR. PETRO: I think we can do it now but not sending them to the Zoning Board is not going to solve anything. We can send them to the Zoning Board to get permission to put the canopy up then they have to come back to the Planning Board at that time we can then review a map.

MR. LANDER: They have to get a variance.

MR. VAN LEEUWEN: The cat's already out of the bag.

MR. PETRO: They can get a variance to put it up.

MR. EDSALL: I think obviously they need site plan approval to do what they want to do.

MR. VAN LEEUWEN: Once they get the variance, they can go ahead and do it because they've already got the building permit.

MR. EDSALL: Their building permit to my understanding is for a canopy but not of the size that requires a variance so they would have to get a building permit and they'd have to get site plan approval.

MR. VAN LEEUWEN: They'll cut the canopy what's to stop them from cutting the canopy down.

MR. EDSALL: They want to put in a mini-mart which is retail sales, retail sales is a separate use which is site plan approval.

MR. PETRO: If they'd trick us and put a smaller canopy and not come in for a mini-market, the gas station is cleaned up.

MR. VAN LEEUWEN: There's two eyesores.

MR. EDSALL: Bottom line is you have got two buildings, if they put in the exact same use what was there it was discontinued for long enough so they'd need a new special permit, I believe so, they got to come before this board. As far as the dive shop building goes, they were before the board, the board's concerns were fixing up the parking area, some landscaping make sure some pavement went in so parking spaces were proper and fix up the building, so far everything except for fixing up the building is on the plan we brought that to their attention and make sure it's in there and they've done it. Again, they are looking for a variance now and they have to come back here the same as with everyone else.

MR. PETRO: That is I agree we should send them.

the Zoning Board but I asked Bob Rogers specifically do they need the wide canopies to met NFPA standards for the fire suppression system he said no.

MR. PETRO: I'll guarantee you that they are putting in canopy that they have to because they are very expensive. Why would they put in a bigger one than they need?

MS. SBRACCIA: My understanding is that they need to obtain a zoning variance 14 feet and they'll not have that with a smaller canopy, they'll need the zoning variance no matter what size canopy.

MR. PETRO: They have to come back here under any circumstances.

MS. SBRACCIA: Yes and for the site plan, like I said, what Gene was looking for was a recommendation to go to the Zoning Board for a variance of the canopy. He still has to come back here for site plan approval and yes, it does have to include the dive store, the second building and as I had ones stated Gene has not been able to obtain who the leasee is in order to get the changes.

MR. VAN LEEUWEN: I know how this operates over there, they are cagier than hell, I'll tell you. We have been fighting this for I have been on the board for over 20 years, for 20 years we have been trying to fight and this Town Board has sent letters, we've sent letters.

MS. SBRACCIA: So the leasee has not been cooperative to the Planning Board.

MR. VAN LEEUWEN: To the owner, the Leonardos and nothing has been done.

MR. PETRO: By sending to the Zoning Board, they are gaining absolutely nothing except they are one foot.

MR. VAN LEEUWEN: You know what my opinion is, you're trying to be the piecemaker.

MR. PETRO: I'm trying for you to convince me that

there's no reason to do it.

MR. VAN LEEUWEN: We're not going to get mad at each other but I know. Who is going to lease this piece for the gas station?

MS. SBRACCIA: Gasland, the company named Gasland.

MR. VAN LEEUWEN: Did they buy it or leasing it?

MS. SBRACCIA: They are leasing it from Mr. Leonardo.

MR. PETRO: If we don't take any action and they do away the canopy, it's going to sit there anyway. We have nothing to lose by sending them there and then having them come back if they don't we're no worse off than we were.

MR. VAN LEEUWEN: They've got money because they removed dirt.

MS. SBRACCIA: And their lease takes effect in 90 days and if they are not up and running and 90 days, they start to lose their money so you have to put the dive shop in there, it has to be part of this site plan if they want to be up and running in 90 days then they have to comply with whatever you're asking.

MR. PETRO: When you come back if this all takes place then what he is saying we all agree upon we have to come up with a legitimate site plan but at this time though hold it up and not send it. There's no reason not to do it.

MR. EDSALL: You have got a site that is having, they are proposing to make changes. Let's assume for the moment that Coastal decided not to put a mini-mart and decided to rebuild the gas station. They are making changes to the site which requires a site plan amendment. Which means they still have to come back here. The best news we have got was they are not two parcels, the dive shops is on this parcel because if they were separate parcels, we couldn't do a damn thing about it. They have to come back here. By not sending them to the ZBA, you're just, you're really cutting off

July 21, 1993

55

your nose to spite your face because you're not allowing a good developer to come in and solve all the problems.

MR. LANDER: I make a motion that we approve Coastal Gasoline site plan.

MR. SCHIEFER: I'll second it.

MR. PETRO: Motion has been made and seconded that the New Windsor Planning Board approve the Coastal site plan on Route 94 in the Town of New Windsor. Any further discussion from the board members? If not, roll call.

ROLL CALL

MR. SCHIEFER	NO
MR. DUBALDI	NO
MR. VAN LEEUWEN	YES
MR. LANDER	NO
MR. PETRO	NO

MR. PETRO: You have been referred to the Town of New Windsor Zoning Board with a positive recommendation from the Town of New Windsor.

MR. EDSALL: These comments, they include some suggestions you can start working on.

MS. SBRACCIA: Gene had asked that a letter be written to the Zoning Board because of the meeting is going to be within a week.

MR. SCHIEFER: That is an automatic.

MR. BABCOCK: We send a copy of the minutes.

MR. PETRO: And a copy of the plan which Michael will stamp as being turned down here and referred to the Zoning Board.

MR. BABCOCK: They'll read the minutes word for word that they are asking for a positive recommendation.

July 21, 1993

56

MS. SBRACCIA: Thank you very much.

MR. VAN LEEUWEN: Believe me, get that dive shop resolved otherwise don't even come in.



December 13, 1993

**Members of the Zoning Board Of Appeals
Town of New Windsor Planning Board
555 Union Avenue
New Windsor, NY 12553**

Re: Variance Appeals of Block 70 Section 1 Lot 1.1 and Lot 1.2 Leonardo

Dear Members of the Board:

It was proposed, back in August 1993, that the present use of gasoline filling at Lot 1.1 be changed to gasoline filling / retail. The use change required a site plan approval from the planning board. In it's review of the proposed site plan the planning board and consultants had determined that a sub-divide of the property was needed. The sub-divide was needed to legally divide the two lots, since only a boundary agreement separated the two parcels yet two tax numbers existed, one for Lot 1.1 and 1.2. The boundary agreement was drawn up as part of probate of the estate of the late Catherine Leonardo, to separate the site into two lots for her two surviving sons. One lot for Constantine and the other for Samuel. These are Lots 1.1 and 1.2 respectively. Known variances were then recognized from the proposed sub-division and site changes on Lot 1.1. Therefore an appearance before the zoning board was warranted.

It is through the sub-division process that most of the variances occur. The variances created by the sub-division consist of area, set-back, and parking space variances on both lots. The above mentioned site, Lots 1.1 and 1.2, predates Town of New Windsor zoning laws by 27 years. The pre-existing conditions are substantiated thorough Town assessor records, and deed dated in 1933, enclosed. Upon the adoption of the zoning laws in 1960, both lots automatically became undersized. These variances associated with the sub-division cannot be mitigated or rectified due to this condition. The adoption of the zoning law after the establishment of lot 1.1 and 1.2 has rendered the site undersized and hence setbacks are also non-conforming. Only one parking variance is accounted for due to the pre-dated condition. This variance occurs on lot 1.2, the lot that has no proposed site improvements. Again, the adoption of the zoning law after the establishment of lot 1.2 has rendered the site undersized. Zoning law regulations pertaining to parking are directly related to retail space and site area, in which to accommodate the spaces, therefore a variance for parking is needed and therefore requested.

The site plan application will create variances by virtue of the site improvements that are proposed under that application. The site plan has created variances pertaining to Lot width, setback, height and signage. Variances associated with lot width is connected to the lot predating zoning law. This variance cannot be mitigated or rectified, since the site is pre-existing zoning regulation adoption and the

adoption of the zoning law after the establishment of lot 1.1 has rendered the site undersized and hence lot width also becomes non-conforming.

Variances associated with setback, height and signage pertain to the proposed use of the lot. Setback variances created by the canopy cannot be rectified since the DOT takings over the last 20 years has limited setback to the 9.6 feet shown. Even without the canopy, the building itself cannot meet this setback condition, due to the building and lot pre-dating zoning law adoption. The height variance cannot be met due to similar circumstances that the setback variance cannot be met. Building height requirements are based upon building setback. Since building setback cannot be met due to the pre-dated condition, building height cannot be met. Even without the canopy, the building itself cannot meet the height regulations, due to the building and lot pre-dating zoning law adoption.

Variances associated with signage are needed to properly market the product in competition with the other 3 petroleum establishments. The 3 other petroleum marketing establishments, all within 200 feet of each other have signage similar if not larger than the proposed signage. Their facade sizes are smaller or the same as the building in question. Since signage is based upon percent area of building facade, the other 3 establishments must be at variance with town zoning as well, including setback. Enclosed photographs substantiate this variance of sign setback with their property lines and sign square footage greater than what is being proposed at Lot 1.1. Therefore the inclusion of signage similar to other establishments within 200 feet of one another and in a neighborhood that is similar in character, will not be a detriment to the public health, safety and character of the neighborhood, that the other 3 similar facilities now possess.

The area of the 5 corners is built up with 3 other petroleum marketing establishments, all within 200 feet of each other. These too have canopies the same height and larger footprint than the proposed canopy. Additionally, photographs enclosed indicate a greater variance with their property lines and canopies. Therefore the inclusion of another canopy with similar characteristics and siting in an area that is similar in use will not be a detriment to the public health, safety and character of the neighborhood, that the other 3 similar facilities now provide. Canopies are now becoming the favored structure with petroleum companies, since the canopy serves a two fold purpose. One is life safety. The canopy is an excellent structure to hang Halon fire suppression systems attractively. The canopy also serves to protect the customer from adverse weather conditions that can affect safety of mobility when dispensing petroleum products. Therefore the canopy will be beneficial to the safety of the neighborhood, by making it safer for all, who use the facility and to bring the present filling station up to safety similar to the other 3 facilities.

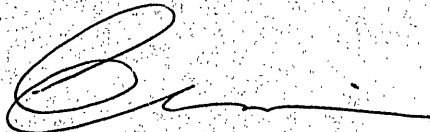
Overall the applicant is not asking for variances that do not exist in the neighborhood that do not presently exist with the other establishments now. Similarly, the applicant is proposing improvements to a site that, before, did not conform to neighborhood characteristics. The site has been in disarray for years. The owner Mr. Leonardo, is attempting to improve and appreciate Lot 1.1 through a lease agreement with Gasland Petroleum Company. Under the lease agreement, Gasland will renovate the gasoline station and provide site improvements. The land-owner will refurbish the "dive shop" to improve that building and provide site improvements, through proceeds generated by the lease

agreement. Without Gasland Petroleum as a new tenant, the present owner cannot afford to improve the site. The inclusion of a new tenant, Gasland Petroleum Company, has only improved the site and blend the site with the present character of the neighborhood. Gasland is the key to improving the above mentioned property. Without the Gasland agreement, the property will remain as it is. Not granting the variances requested for will terminate the lease agreement between Gasland and Mr. Leonardo and leave the site uncompleted and non conforming to neighborhood character.

The applicant is only proposing a use and variances that the neighborhood presently accommodates with 3 other similar establishments. We therefore ask the Board to grant the necessary variances to complete this part of the planning process and improve a site which needs improvement.

Sincerely,

CIVIL TECHNOLOGIES AND ENGINEERING

A handwritten signature in black ink, appearing to read 'E. Ninnie', with a stylized flourish at the end.

Eugene D. Ninnie, P.E.

EDN/wp
930251t8



Civil Technologies & Engineering

Construction & Engineering Consultants • Civil-Architectural-Structural

September 24, 1993

McGoey & Hauser and Edsall
45 Quassaick Ave.
New Windsor, NY 12553

Re: MHE Job # 93-25

Dear Mr. Edsall:

The following field data was obtained for the variances required for the above mentioned project.

1. Cheese Factory L shaped Bldg ... 13' height
2. Club 32 Bar..... 22' height
3. Proposed Coastal Station..... 14' height

If you have any questions please do not hesitate to call

Sincerely,

CIVIL TECHNOLOGIES AND ENGINEERING

A handwritten signature in black ink, consisting of a large, stylized 'E' followed by a horizontal line.

Eugene D. Ninnie, P.E.